Supreme Court, U.S.
FILED
AUG 25 1980
MICHAEL RODAK, JR., CLERK

80-438

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GENEVIEVE GRAYDON,

Petitioner,

v.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

GENEVIEVE GRAYDON, in Propria Persona
99 South Raymond Avenue
Pasadena, California 91105
(213) 793-5429 Petitioner

QUESTIONS PRESENTED

1. Are a citizen's rights to petition under the First Amendment and the rights to due process and equal protection under the Fifth and Fourteenth Amendments violated by a state statute of limitation which bars citizens from challenging a redevelopment agency's award of a $12 million construction contract without competitive bidding in violation of state law which requires competitive bidding, even though the citizens' action was commenced in court before the contract was signed by any of the parties?

2. Can the state constitutionally enact special procedural statutes applicable only to actions by citizens against local government which operate to prevent a court from invalidating a local redevelopment agency's $12 million construction contract awarded without competitive

bidding in contravention of the competitive bidding law?

3. Are citizens' rights to petition under the First Amendment and due process and equal protection under the Fifth and Fourteenth Amendments impaired by state statutes applicable exclusively to local redevelopment agencies (when members are not elected but appointed), which virtually prevent citizens from challenging in court any agency conduct, however egregious, after a general redevelopment plan has been adopted?

4. Can a municipal redevelopment agency and a developer be held to answer in damages under the general laws relating to damage actions if the impediments created by state law against the citizens in favor of the government prevent citizens' actions in court to halt an illegal construction project?

LIST OF PARTIES

GENEVIEVE GRAYDON, individually and as representative of the taxpayers of the City of Pasadena,

Petitioner,

v.

THE PASADENA REDEVELOPMENT AGENCY, a public body corporate and politic; LOUIS SHEPARD, Executive Director of the Pasadena Redevelopment Agency;

Respondents,

ERNEST W. HAHN, INCORPORATED, a California Corporation,

Real Party in Interest.

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The Order of Hearing Denied in re: 2 Civ. No. 56242, Graydon vs. Pasadena Redevelopment Agency was filed on June 4, 1980 by the California Supreme Court.

The California Supreme Court has denied relief where abuse of due process is alleged. The only recourse is to the U. S. Supreme Court.

In Hilliard v. Commonwealth of Pennsylvania, 308 F. Supp. 756 (1970), under "4. Constitutional Law" is stated: "Proscription against arbitrariness, capriciousness, or bad faith is no less applicable to state action under Fourteenth Amendment than to federal action under the Fifth Amendment. U.S.C.A. Const. Amends. 5, 14."

Petition for Writ of Mandamus and Declaratory Judgment and Injunction in Support Thereof, in Graydon vs. The Pasadena Redevelopment Agency, et al.,

Ernest W. Hahn, Inc., Real Party in Interest,. in the Superior Court of the State of California, for the County of Los Angeles, No. C 228013, was filed on January 26, 1978. (Clerk's Transcript Page 1) Petitioner alleges:

> "PARTIES 1 Petitioner Genevieve Graydon is a citizen, resident and taxpayer of the City of Pasadena, California. Petitioner brings this action on her own behalf and as representative of the taxpayers of the City of Pasadena.
>
> "2 Respondent The Pasadena Redevelopment Agency (hereafter the Agency) is a public body corporate and politic, organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 et seq.).
>
> "3 Respondent Louis Shepard is the Executive Director of the Pasadena Redevelopment Agency.
>
> "4 Real Party in Interest, Ernest W. Hahn, Inc. (hereafter Hahn) is a California Corporation. Hahn is a construction contractor and developer engaging in construction activity in the City of Pasadena.

"RELATIONSHIP BETWEEN THE AGENCY AND HAHN

"Since early 1974, the Agency and Hahn have been cooperating to promote and construct a retail shopping center in downtown Pasadena under a program by which the Agency uses its governmental powers to acquire private property with public funds for sale to Hahn for Hahn's use as a privately-owned and operated shopping center.

"THE PUBLIC PARKING GARAGE PROJECT 6 To promote the success of Hahn's retail shopping center, the Agency intends to construct a multi-million dollar underground public parking garage to park 2000 cars beneath the site of the proposed retail shopping center.

"7 The underground parking garage will be publicly owned and operated by the Agency for the use of the general public. Its construction will be paid for from public funds.

"THE COMPETITIVE BIDDING LAW

"8 California Health and Safety Code Section 33422 provides, in pertinent part:

"'Any work of grading, clearing, demolition, or construc-

tion in excess of two thousand five hundred dollars ($2,500) undertaken by the Agency shall be done by contract after competitive bids. ...'

"9 At all times herein mentioned, the Agency and Hahn were aware of the provisions of Health and Safety Code Section 33422.

"THE AGENCY'S AWARD OF A CONSTRUCTION CONTRACT TO HAHN WITHOUT COMPETITIVE BIDDING

"10 On November 2, 1977, notwithstanding the provisions of Health and Safety Code Section 33422, the Agency purported to award Hahn a contract (hereafter the Parking Garage Contract) to construct the underground public parking garage for the Agency without advertising for competitive bids.

"11 The Parking Garage Contract, the terms of which are favorable to Hahn and unfavorable to the taxpaying public, authorize payment to Hahn of a base price of eleven million nine hundred thirty thousand, four hundred and sixty-six dollars (11,930,466), which may be escalated upward upon the occurrence of numerous contingencies as provided in the Parking Garage Contract.

"THE AGENCY'S VIOLATION OF THE LAW AND MISUSE OF PUBLIC FUNDS

"12 The Agency's award of the Parking Garage Contract to Hahn without competitive bidding is illegal. The Parking Garage Contract is null and void, and of no force and effect.

"13 Payment from the Agency to Hahn of public funds pursuant to the provisions of the illegal Parking Garage Contract is unauthorized, and is a misuse of public funds.

"14 Nevertheless, Petitioner is informed and believes that the Agency has made, or proposes to make, payment of public funds to Hahn pursuant to the illegal Parking Garage Contract, and will continue to do so unless restrained by order of this court.

"15 Petitioner has no adequate remedy at law.

"WHEREFORE, Petitioner Prays that this Court issue its Writ of Mandamus to the Agency, which

"1. Directs the Agency to advertise for competitive bids before awarding a contract for the construction of the underground Parking Garage; and

"2. Declares the Parking Garage

Contract purportedly awarded by the Agency to Hahn to be illegal; and

"3. Prohibits Respondent Shepard and the Agency from disbursing any funds in accordance with the provisions of the Parking Garage Contract; and

"4. Directs the Agency to pay Petitioner her attorney's fees and costs of litigation herein; and

"5. Grants such other relief as the Court may deem proper.

"Respectfully submitted,

(Signed) MICHAEL V. McINTIRE
Attorney for Petitioner"

On February 2, 1978, the following ALTERNATIVE WRIT OF MANDAMUS AND ORDER DIRECTING ISSUANCE was filed (CT 16):

"The People of the State of California

"To Respondents Pasadena Redevelopment Agency and Louis Shepard, Executive Director of the Pasadena Redevelopment Agency.

"It appears from the verified petition on file herein that you have failed to perform your legal duty and acted beyond your legal

authority by awarding a multi-million dollar construction contract for the construction of a public parking garage without competitive bidding as required by law, and that petitioner has no adequate remedy at law.

"THEREFORE, you are commanded, upon receipt of this writ, to advertise for competitive bids for the construction of the public parking garage described in the petition herein; to direct Ernest W. Hahn Co., Real Party in Interest, to cease and desist from all further work under the contract previously awarded without competitive bidding; and to withhold all payments of public funds to Ernest W. Hahn Co. under such contract; or

"IN THE ALTERNATIVE, to show cause before this court on February 22, 1978, at 9:00 A.M., in Dept. 85 of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California, why you have not done so.

"Dated Feb. 2 1978 John J. Corcoran, Clerk (name stamp) Deputy Clerk, (signature illegible)

"LET THE FOREGOING WRIT ISSUE

"IT IS ORDERED that a copy of this alternative writ and Petitioner's points and authorities be served on Respondents and the Real Party In Interest herein not later than February 7, 1978
Dated Feb 2 1978
(Signed) Levin
Arnold Levin Commissioner"

This lawsuit is a simple mandamus suit. Petitioner did not attack the bond issues, which were specifically validated in a prior lawsuit by another person. Petitioner does not come within the purview of the Code of Civil Procedure, the basis for the Respondents' 6th and 7th defenses and the basis of the Court's judgment.

On November 2, 1977, the PRA awarded the contract to Hahn, without competitive bidding, without a resolution required under the Code of Civil Procedure and without a contract. On January 26, 1978, the lawsuit was filed. On February

8, 1978, the completed contract was signed. The Court, in the Hearing on March 7, 1978, was concerned that petitioner had filed the suit more than 60 days after the contract was awarded. At the time of the Hearing it had not been discovered that there was no resolution. The Court appeared to be unconcerned that the contract did not exist until after the suit was filed. The Court, after a long discourse on his theory that if you cannot find a case to base your case on you try to discern an attitude or approach, is quoted on Page 32 of the Court Transcript of March 7, 1978:

> "... Maybe we should try the whole case, including this, and rule on it all at once, and then at least everybody knows where he stands, because this is an $11.5 million contract and you say

you have spent a few hundred thousand dollars at this point. By the time the case goes up on appeal, it will be over with if I don't enjoin it. And there are cases that say that a public official who makes an unlawful disbursal of public funds has to cough it up out of his own pocket. So I don't know whether you want to consult with your client before asking me to rule in your favor on these affirmative defenses or not.

"MR. JACOBS: There used to be an old rule that a lawyer didn't go to jail, and even that has been changing.

"THE COURT: No, the rule was that a lawyer is supposed to see to it that he doesn't go to jail. It's just that he doesn't always succeed.

"MR. JACOBS: Recently, it didn't work too well."

Judge Phillips did not "try the whole case." He demanded that petitioner obtain depositions costing about $2,000 and then held another Hearing without them and with the finding on the statute of limitations alone.

This conduct must be a very serious abuse of due process of law! All of the California courts have abused due process of law in this case. The actions of these courts, sanctioning the contravention of law, have injured the petitioner's civil right to protect her reputation. The courts have made her the villain and the officials, disdainful of the law, the heroes. They are credited with creating private commercial progress with proceeds from $58,000,000 in bonds about to default, with interest making a total of around $114,000,000. The courts say the power brokers are right! The protesting citizen is wrong! The petitioner, dedicated to upholding the Constitutional protection of private property against the taking for private developers (California Redevelopment

Agencies have unlimited power of eminent domain, exceeding that of cities) has only succeeded in discouraging future citizen protests against the power brokers. Look what happened to Genevieve Graydon!

The Supreme Court should review and look at Redevelopment abuse and adopt new guidelines.

LIST OF CORRECTIONS IN SUPPORT OF PETITIONER:

1. Respondents cannot justify contravention of competitive bidding in the construction contract awarded to Hahn:

NO VALIDATION SUIT

In the Findings of Fact and Conclusions of Law, Finding 19 states (CT 729):

> "Attachment 4, Article X to the DDA provides that it was the desire of the PRA, subject to legal requirements, to negotiate a contract with the Developer's general con-

tractor, Ernest W. Hahn, Inc., for the negotiated maximum construction price of $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction of the subterranean garage, if construction commenced after January 1, 1977. The DDA also required the Developer or its general contractor, Ernest W. Hahn, Inc., to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor, not to exceed $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon the monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction, if construction commenced after January 1, 1977."

The entire Finding 19 has been quoted to prove nothing is taken out of context.

Under CONCLUSIONS OF LAW 1. is

stated:

> "The Court concludes in all respects as set forth in the foregoing Findings of Fact.

The CONCLUSIONS OF LAW are strictly based upon Government Code Section 53511, permitting the Agency to bring an action to determine validity of its bonds, warrants, contracts and evidence of indebtedness pursuant to Chapter 9 of Title 10, Part 1 of the Code of Civil Procedure. This is the Code under which Respondents' 6th and 7th defenses are claimed and the basis of the Court's judgment of late filing against the petitioner.

The only CONCLUSIONS OF LAW concern these foregoing Codes. No mention is made of California Health and Safety Code Section 33422, demanding competitive bidding in this case, yet its final CONCLUSION, No. 12. states:

> "Respondents are entitled to a judgment (1) denying the Petition for Writ of Mandate, (2) declaring that petitioner take nothing by her action and (3) awarding respondents and each of them their costs of suit incurred herein."

This was signed by Judge Charles H. Phillips, on June 15, 1978.

If this case was truly, without any exceptions, which petitioner denies, required to file a lawsuit within 60 days of the awarding of the contract, Judge Phillips should have thrown it out of court in the first Hearing, as ineligible to be heard, instead of stating "Maybe we should try the whole case," which he did not do. Petitioner should not have been required to incur $2,000 in cost of depositions, not used. Also, all taxpayers in Pasadena should not be penalized for delinquency in filing by one citizen, filing on their behalf.

In the Finding No. 19, with which the "Court concludes in all respects," the negotiated contract is "subject to legal requirements," and Hahn is required "to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor."

This lawsuit is a demand on the PRA to do just that. Without trial of this petition the judgment of Judge Charles H. Phillips is "bad faith" under the Fourteenth Amendment.

In the Declaration of Genevieve Graydon (CT 254) in regard to the meeting on January 28, 1975 of the City Board for presentation of the Disposition and Development Agreement for the retail center by the PRA, Gerald Trimble, PRA's Executive Director, "referring to the Agency's desire to award the contract to con-

struct the underground garage to Hahn without competitive bidding, said:

> 'Since we are a public agency, we are required by redevelopment law to go out for public bid on it, a public facility of this nature. We're required to have a validation suit. O'Melveny and Myers (Agency Bond Counsel) is requiring this before they would give us an opinion of counsel, a bond opinion. The same thing was done in the City of Hawthorne. The same approach will be taken here.'"

The PRA never filed the validation suit. This is not due process of law.

LIST OF CORRECTIONS, 2.:

Without competitive bidding there is no way of knowing how much of the payment under the contract to Hahn is a gift of public funds. Hahn put in competitive bids on the Mall's above ground Los Robles Garage and two Pedestrian Bridges, which while higher than the awardee's bids, could be compared therewith. These were basic lump sum bids. Copies of the

actual bid proposals of Hahn and the awardee are in the possession of the petitioner. Hahn's bid on the garage, $2,843,675, and the awardee's, $2,433,200, shows a difference of $410,475. Hahn's bid on the bridges, $649,000, and the awardee's, $592,500, shows a difference of $56,500.

LIST OF CORRECTIONS, 3.:

The claim that only Hahn could build the subterranean garage because it is integrated with the mall built on the top of it is disputed by the fact that the Holiday Inn was built on top of the Conference Center Garage, across the street from the Mall, at different times with different contractors. The permit to build the garage was taken out on November 22, 1971, with contractor Turner Construction Co. The permit for the Holiday Inn was taken

out on April 28, 1975, with contractor P. J. Walker Co. The permit for revisions to support the hotel on top of the garage was taken out on April 23, 1975, with contractor Willens & Bertisch Co. There was some difficulty in the financing, the delay of which petitioner believes has been claimed by Respondents as a problem of integration. The close dates of the permits for the hotel and the structural supports needed shows no delay. In an article in the Pasadena Star-News, August 29, 1974, Executive Director of the PRA, Gerald M. Trimble, said:

> "Things are as they have been for some time with Mr. Chen." Developer of the hotel. "It is possible construction could start then, of course, but we have no way of knowing at this time when work will actually begin. We have nothing signed."

LIST OF CORRECTIONS, 4.:

The Opinion of Attorney Eugene B. Jacobs

requested by the PRA to contravene the competitive bidding law is explained in Finding 21 of Findings of Fact and Conclusions of Law (CT 731):

> "The award of the contract was made in reliance upon a written opinion dated October 4, 1977, of the Law Offices of Eugene B. Jacobs, General Counsel to the Agency, that the competitive bidding requirements of Health and Safety Code Section 33422 were not applicable to the construction contract for the subterranean garage which is to be the support for and integrated with and provide access to the Retail Center."

This Opinion is a sham. Its use and reference in Finding 21 above to avoid competitive bidding is a very serious abuse of due process, which if it had been had in court it would have protected the citizens of Pasadena against a gift of public funds. Petitioner has prepared a comprehensive analysis of every case cited as case law against

competitive bidding. Not one case supports this. The competitive bidding law is restricted to "grading, clearing, demolition, or construction." It does not relate to consultants, architects, engineers, etc. These cases are either irrelevant or actually support the petitioner. An example of the latter is Kennedy v. Ross, (1946) 28 Cal. 2d 569, 170 P. 2d 904, 912. It concerns a consulting engineer. The Opinion adroitly omits the California State Supreme Court requirement for competitive bidding. In the quotation from the case below the underlined portion was omitted in the Opinion:

> "...It is also true that the framers of the charter were at pains to require that contracts for the construction of public works should be subject to competitive bidding, and it is assumed that all contracts for the construction of the improvement will conform to that procedure. But it does not follow

> that strict compliance with that requirement must be maintained in procuring expert services to furnish plans and specifications for the construction ..."

In the Opinion the quotation which precedes the omission was paraphrased and that which follows the word "But" was quoted.

Another example: Meakin v. Steveland, Inc. (1977) 68 Cal. App. 3d 490, 137 Cal. Rptr. 359, 363-364. This case related to the vacation and sale of a street in San Francisco. Stated therein:

> "Before trial, however, respondents Steveland, Inc. and First Market Company (hereinafter developers) completed the construction of a 40-story office building on the adjoining property, using certain developmental rights arising from the acquisition of Ecker Street. Hence, if appellant should ultimately prevail, his only remedy now would be in the form of damages."

With the subject case not tried on the issues in the California Courts and

seeking recourse in the U. S. Supreme Court, the subterranean garage is close to completion, which places this case in the same category of the only remedy being damages for the citizens of Pasadena.

The Opinion is a sham. On Page Four is stated:

> "The Agency has been advised that it would take approximately two months to complete the public bidding process, including the time to prepare and receive plans and specifications, contract documents, and to analyze bids."

It appears that the Agency's architect, Charles Kober and Associates, collected three letters from consulting firms and then sent them to Eugene Jaccbs' Office on March 1, 1977. Why? This was seven months before the date of the Opinion, October 4, 1977. If, as shown above, only two months would be required to furnish competitive bids why

was preparation made seven months ahead for Jacobs' Opinion, instead of obeying the statutory law requiring competitive bidding? This would have forestalled the necessity for an Opinion with the consequent lawsuit.

LIST OF CORRECTIONS, 5.:

Res Judicata: The APPEAL which affirmed the judgment against the petitioner was concurred in by Justice Delbert E. Wong, who, while a Deputy Attorney General of the State of California, on January 19, 1955, wrote Opinion No. 54-169, significantly on "Subject: Community Redevelopment." The Appeal, Page 4, states:

> "... Additionally, respondents alleged as affirmative defenses, among other things, that the validity of the plan and contract awarded was previously adjudicated in a prior lawsuit by appellant (Graydon v. Board of Directors, et al.)..."

This is not true. How could the petitioner have known in 1975 that the PRA would break the law in 1977? In LIST OF CORRECTIONS IN SUPPORT OF PETITIONER, No. 1. above, under NO VALIDATION SUIT, it is recounted that the DDA required that Hahn was "to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor." Also, PRA Executive Director Gerald M. Trimble told the City Directors that a validation suit would be filed. This never happened.

In that lawsuit, the petitioner, who is not an attorney, studied the California State Health and Safety Code, relative to Redevelopment, thoroughly and could not find that the suddenly exposed Disposition and Development Agreement qualified thereunder, especially relative

to blight and sufficiency of tax increment for the total prospective bond issues. Space not permitting a full list of the charges, a portion of one is:

> "...Further, plaintiff declares that her suit is brought under the 14th Amendment of the United States Constitution as a citizen/taxpayer deprived of municipal services, bereft of taxes illegally impounded for the Pasadena Redevelopment Agency."

In contrast to the present case, the plaintiff in that case did receive due process of law, since Judge Arch R. Tuthill, while telling plaintiff that her papers weren't sufficient at that point, gave her 30 days in which to amend her petition. He also overruled the motion to strike. The plaintiff had done all she could at that time and believed it would be unethical on her part to prolong the proceedings. She did not accept the 30 days in which to amend. Neither did she sanction a future contravention of the

competitive bidding law in awarding a contract which did not exist in April, 1975, nor on November 2, 1977, nor on January 26, 1978, the date of filing subject mandamus lawsuit.

Another reason the Supreme Court should accept this petition for writ of certiorari is it is time for the Court to reanalyze the holding in Berman v. Parker (348 US 26, 99 L ed 27, 75 S Ct 98), decided November 22, 1954. Redevelopment has evolved from civic improvement to developer subsidies -- from slum clearance to private shopping malls.

What was known only to researchers a few years ago has become openly exposed throughout the State of California. The Redevelopment law permits the dangerous takeover of private property, not for public use. An example of this is the recent expose' by the Los Angeles Herald-

Examiner of Redevelopment's creation, the City of Industry, an industrial complex with 630 residents and plans which will cost the taxpayers $600 million.

The New Jersey Supreme Court on February 22, 1971, upheld a finding of "blight" in Levin v. Township Committee of Bridgewater, (57 NJ 506, 274 A2d 1, 45 ALR3d 1054). In Justice Haneman's dissent, over 16 years after Berman v. Parker, he challenged the abuse of special interests. He said on page 1087:

> "These extensions of the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. And it behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights. The reasoning upon the point begins with the basic concept of natural rights and of property as one of those rights. To secure those rights governments were instituted, says the Declaration, and to secure them governments may impose limitations upon them; moreover, by

clear implication the Fifth Amendment authorizes the taking of private property for public use. But here is the end of government power. That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments. The reasoning which applies to this right is the same as that which applies to other rights guaranteed by the Constitution."

Long ago in Britain, the famous Judge William Blackstone said:

"Regard of the law for private property is so great that it will not authorize the least violation of it, not even for the general good of the whole community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good."

Also, William Pitt said:

"... The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter, but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."

In Propria Persona

Signed: Genevieve Graydon

Dated: August 13, 1982

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A P P E N D I X

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GENEVIEVE GRAYDON, individually and as a representative of the taxpayers of the City of Pasadena,

Petitioner,

vs.

THE PASADENA REDEVELOPMENT AGENCY, etc. et al.

Respondents.

ERNEST W. HAHN, INC., etc.

Real Party in Interest.

PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

F I L E D

JUN 15 1978

John J. Corcoran County Clerk

L. W. Seabury

By L. W. Seabury, Deputy

NO: C 228 013

The within action came on regularly for trial on March 7, 1978, and March 20, 1978, in Department 88 of the above-entitled court. The parties were represented by their attorneys of record. Documentary evidence was introduced by petitioner and respondents. Testimony was presented by deposition and declaration. The matter was briefed, argued and submitted for decision.

Wherefore, the court being fully advised in the premises now renders its

decisions and makes its findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner Genevieve Graydon is, and at all times pertinent hereto, was a resident of the City of Pasadena, California.

2. Respondent Pasadena Redevelopment Agency ("PRA") is, and at all times pertinent hereto was, a public body, corporate and politic, organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.).

3. Respondent Louis Shepard is now and ever since November 16, 1977, has been the Executive Director of the PRA. Gerald M. Trimble, between July 6, 1971 and June 14, 1977, was the Executive

Director of the PRA.

4. Real Party in interest, Ernest W. Hahn, Inc. is, and at all times pertinent hereto was, a California corporation.

5. On December 22, 1970, the PRA, pursuant the Community Redevelopment Law, passed and adopted its Resolution No. 70-25 which said Resolution approved the Redevelopment Plan for the Downtown Redevelopment Project (the "Plan") and recommended that the Board of Directors of the City of Pasadena ("City Board") adopt the Plan.

6. On December 29, 1970, the City Board passed and adopted ordinance No. 5005 which said ordinance approved and adopted the Plan.

7. The Plan provides for the elimination and prevention of blight in the Downtown Redevelopment Project Area

by the acquisition of certain real property, demolition and removal of certain buildings and improvements, relocation assistance to displaced occupants, installation of public improvements, disposition of property for uses in accordance with the Plan and redevelopment thereof by private enterprise and other agencies for uses in accordance with the Plan.

8. By Ordinance No. 5005, the City Board of the City of Pasadena stated its purposes and intent with respect to the Downtown Redevelopment Project Area are to eliminate the conditions of blight existing therein; insure as far as possible that causes of blighting conditions be eliminated or protected against; provide for participation by owner and tenants engaged in business in the Project area; encourage and insure the rehabili-

tation, rebuilding and redevelopment of the Project area; encourage and foster the the economic revitalization of the Project area; relocate owners and occupants of the Project area as needed; and to redevelop and rebuild the public facilities in the Project Area. By Ordinance No. 5005, the City Board found that the Project Area is a blighted area, the redevelopment of which is necessary to carry out the public purposes declared in the Community Redevelopment Law.

9. On February 7, 1975, after lengthy negotiations the PRA approved and entered into a Disposition and Development Agreement (DDA) with H-CHH Associates, a partnership (the Developer) comprised of Ernest W. Hahn, Inc., a well-known shopping center developer and Carter Hawley Hale Stores, Inc. a well-

known corporation owning large department stores including the Broadway, for the development of a regional shopping center pursuant to the Plan. The DDA was approved by the Board of Directors of the City of Pasadena on January 28, 1975, and was executed by the Developer on January 28, 1975, and by the PRA on February 7, 1975.

10. A First Implementation Agreement to the DDA was executed by the Developer on August 19, 1976 and by the PRA on August 24, 1976.

11. The DDA as implemented by the First Implementation Agreement provided for the development by the Developer and the PRA of a retail center on a site located in the Downtown Redevelopment Project area bounded by Marengo Avenue, Los Robles Avenue, Colorado Boulevard and Green Street consisting of approximately

11.3 acres. The Retail Center was and is planned and designed to be a complex of approximately 600,000 square feet of retail shopping consisting of the Broadway on the eastern portion and J.C. Penney on the western portion with an enclosed air-conditioned two-level mall and specialty shops along the mall between the department stores.

The Retail Center will have public parking facilities consisting of a two-level subterranean parking garage for approximately 2000 vehicles located beneath and integrated with the Retail Center above the garage, one above-grade public parking structure located to the west of the Retail Center on the west side of Marengo Avenue for approximately 700 vehicles and one above-grade public parking structure located to the south of the Retail Center on the south side of

Green Street for approximately 530 vehicles.

12. Under the DDA and as implemented by the First Implementation Agreement, the PRA was obligated to purchase the property required for the Retail Center and the public parking facilities, relocate occupants, demolish and clear improvements existing on the property, construct the subterranean garage and the two above-grade garages and finance such activities from the proceeds of a series of lease-revenue bonds to be issued by the PRA. The DDA also provided that the PRA would sell to the Developer an air space parcel above the subterranean garage in which the Developer would construct the Retail Center.

13. Following the execution of the DDA, the PRA and Developer negotiated with the two major department stores in-

volved in an effort to arrive at a Construction, Operation and Reciprocal Agreement ("REA") which would bind the department stores as well as the Developer and the PRA. It was necessary to have the department stores committed to the development of the Retail Center before the project could go forward and before the bonds to finance the public cost of the development could be issued and sold. On August 24, 1976, the REA was agreed to by the PRA Developer, J.C. Penney Co. and Carter Hawley Hale Stores, Inc.

14. On August 6, 1976, the PRA approved a lease between the PRA and the City of Pasadena, which was approved by ordinance of the City of Pasadena, and a Reimbursement Agreement between the PRA and the City of Pasadena. These documents together with the DDA, First Implementation Agreement and the REA provided

that the public parking facilities would be constructed by the PRA and leased to the City of Pasadena with the lease payments providing the principal security for the lease-revenue bonds. The Reimbursement Agreement provided that the lease payments from the City of Pasadena to the PRA could be reimbursed by the PRA from tax increments generated by the Retail Center or from other developments in the Downtown Redevelopment Project area.

15. On August 6, 1976, the PRA authorized the issuance of the first of a series of lease-revenue bonds partially to finance the acquisition of the Retail Center site and to finance other PRA activities. On August 24, 1976, the PRA awarded the sale of such lease-revenue bonds to the lowest bidder.

16. In August, 1976, a group of

Pasadena citizens circulated referendum petitions requesting the Board of Directors of the City of Pasadena to rescind the ordinance approving the lease or hold an election in connection with the lease-revenue bonds because of their concern that the City's general fund could be obligated for the lease payment to the PRA.

17. On October 12, 1976, the Board of Directors of the City of Pasadena rescinded the ordinance approving the lease between the PRA and City of Pasadena and approved the issuance of up to $62 million in tax allocation bonds by the PRA as the method of financing the project and other costs of the Downtown Redevelopment Project.

18. On October 14, 1976, the PRA authorized the issuance of tax allocation bonds not to exceed $32 million a portion

of the proceeds of which was to finance the acquisition of land, relocation and demolition for the Retail Center. Said bonds were sold on November 4, 1976, and delivered on November 16, 1976.

19. Attachment 4, Article X to the DDA provides that it was the desire of the PRA, subject to legal requirements, to negotiate a contract with the Developer's general contractor, Ernest W. Hahn, Inc., for the negotiated maximum construction price of $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction of the subterranean garage, if construction commenced after January 1, 1977. The DDA

also required the Developer or its general contractor, Ernest W. Hahn, Inc., to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor, not to exceed $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon the monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction, if construction commenced after January 1, 1977.

20. The First Implementation Agreement to the DDA executed by the Developer on August 19, 1976, and by the PRA on August 24, 1976, revised the provisions of the DDA with regard to the construction of the subterranean garage. Such

revision provided for construction by the Developer or its general contractor, Ernest W. Hahn, Inc., at a negotiated maximum price of $11,335,360 (increased from $10,742,478, as provided in the DDA, because of additional information acquired and changes required by the PRA) based upon a commencement of construction date of January 1, 1977, subject to an increase at the rate of one half per cent per month for each month after January 1, 1977, to the actual date of commencement of construction and required the Developer or its general contractor, Ernest W. Hahn, Inc., to submit a competitive bid, if advertised by the PRA, at a maximum price of $11,335,360 based upon a start of construction date of January 1, 1977, subject to an increase of one half per cent per month to actual start of construc-

tion.

21. On November 2, 1977, the governing body of the PRA at its regular public meeting awarded and authorized execution of a negotiated contract for construction of the subterranean garage to Ernest W. Hahn, Inc. not to exceed a guaranteed maximum price of $11,939,466 according to the terms of said contract. Said maximum price was based on the commencement of construction date of November 15, 1977, and the amount of $11,335,360 provided for in the First Implementation Agreement plus the sum of $595,068 which sum represents $56,676.80 per month for the period between January 1, 1977, and November 15, 1977. Petitioner was present at said PRA regular meeting of November 2, 1977, and was thus aware of the award and authorization of said contract. The award of the contract

was made in reliance upon a written opinion dated October 4, 1977, of the Law Offices of Eugene B. Jacobs, General Counsel to the Agency, that the competitive bidding requirements of Health and Safety Code Section 33422 were not applicableto the construction contract for the subterranean garage which is to be the support for and integrated with and provide access to the Retail Center.

22. On December 15, 1977, the PRA sold and awarded $26 million tax allocation bonds to finance the construction by the PRA of the public parking facilities for the Retail Center. The official statement with respect to said bonds stated that the contract identified in Finding No. 21 had been awarded in reliance of the opinion identified in Finding No. 21. The bonds are to be paid partially from tax increments generated

by the Retail Center which will begin to flow when the Retail Center is constructed.

23. The PRA's statutory purpose, pursuant to the Community Redevelopment Law, the Plan and the purpose and intent of the City of Pasadena with respect to the Plan and the Downtown Redevelopment Project is to eliminate the conditions of blight in the Downtown Redevelopment Project Area and to redevelop said area pursuant to the Plan. The contract identified in Finding No. 21 is directly linked to and is part of the PRA's method of financing the public costs of the Retail Center and the redevelopment of the Downtown Redevelopment Project Area, the purpose of the PRA in the implementation of the Plan and the manner in which such purpose of the PRA must be financed and has been financed. The

ability of the PRA to operate and accomplish its statutory purpose and the purposees of the Plan would be substantially impaired unless the contract identified in Finding No. 21 is subject to a prompt validation procedure.

24. The contract identified in Finding No. 21 is a contract subject to the validation procedures contained in Chapter 9 (commencing with Section 860) of Article 10 of Division 1 of the Code of Civil Procedure. Any action by an interested person challenging the validity of said contract must be brought within 60 days after the PRA awarded and authorized the contract identified in Finding No. 21 which was on November 2, 1977.

25. There is no evidence of any acts of the PRA which would estop the PRA from asserting the bar of the 60 day

statute of limitation under Code of Civil Procedure Section 860 and 863.

26. This action was commenced on January 26, 1978, which is 85 days after the award, on November 2, 1977, of the contract identified in Finding No. 21.

27. The Court finds in all respects set forth in the Conclusions of Law following these Findings of Fact.

CONCLUSIONS OF LAW

1. The Court concludes in all respects as set forth in the foregoing Findings of Fact.

2. Government Code Section 53511 provides that a local agency may bring an action to determine the validity of its bonds, warrants, contracts and evidence of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 1 of the Code of Civil Procedure.

3. Government Code Section 53510 defines local agency as any city, county, city and county, public district or any public or municipal corporation, public agency or public authority. The PRA is a local agency within the meaning of Government Code Section 53510.

4. Code of Civil Procedure Section 860 provides that a public agency may bring an action to determine the validity of any matter which is authorized to be determined pursuant to Chapter 9 of Title 10 Part 1 of the Code of Civil Procedures within 60 days after the existence of such matter.

5. Code of Civil Procedure Section 864 provides that for the purposes of said Chapter 9 of Title 10 of Part 1 of the Code of Civil Procedure, contracts shall be deemed to be in existence upon the date of their authorization and that

and that contracts shall be deemed authorized as of the date of adoption by the governing agency of the public agency of a resolution approving the contract and authorizing its execution.

6. Code of Civil Procedure Section 863 provides that if no action has been brought by the public agency pursuant to Chapter 9 of Title 10 of Part 1 of the Code of Civil Procedure to determine the validity of a matter within 60 days after the existence of a matter, any interested person may bring action, within the time prescribed by Code of Civil Procedure Section 860, to determine the validity of the matter.

7. The contract for the construction of the subterranean garage between the PRA and Ernest W. Hahn, Inc. was in existence on November 2, 1977, within the meaning of Code of Civil Procedure

Section 864.

8. The contract identified in Conclusion No. 7 is such that Respondent PRA's ability to operate would be substantially impaired absent a prompt validation procedure as to said contract.

9. This action is subject to the provisions and procedures contained in Chapter 9, of Title 10, of Part 1 of the Code of Civil Procedure and must have been brought within a 60 day period from the existence of the contract identified in paragraph 7 hereof, as provided in Code of Civil Procedure Sections 860 and 863, which period commenced to run on November 2, 1977, and which expired on January 3, 1978.

10. This action was filed more than 60 days after the existence of the contract identified in Conclusion No. 7 and is barred by the provisions of Code of

Civil Procedure Sections 860 and 863.

11. Respondents are not estopped from asserting that this action is barred by the 60 day statute of limitations provided for in Code of Civil Procedure Section 860 and 863.

12. Respondents are entitled to a judgment (1) denying the Petition for Writ of Mandate, (2) declaring that petitioner take nothing by her action and (3) awarding respondents and each of them their costs of suit incurred herein.

DATE: June 15, 1978

(Signed) Charles H. Phillips
Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GENEVIEVE GRAYDON,

Appellant,

v.

THE PASADENA REDEVELOPMENT AGENCY, et al.,

Respondents.

ERNEST W. HAHN,

Real Party in Interest.

2 Civ. No. 56242

(Super. Ct. No. C-228,013)

O R D E R

COURT OF APPEAL-SECOND DIST.

F I L E D
APR 8-1980

CLAY ROBBINS, JR. Clerk

Deputy Clerk

THE COURT:*

The letter request of counsel for respondents for the publication of the opinion in the above entitled case filed on March 25, 1980, is denied for the reason that the court does not believe that it meets the standards for publication set forth in Rule 976, California Rules of Court.

Pursuant to Rule 978, California Rules of Court, the clerk is directed to forward to the Supreme Court a copy of counsel's letter of April 3, 1980, a copy of the aforementioned opinion and a copy of this order.

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* KINGSLEY, Acting P.J.; WONG, J.**

** Assigned by the Chief Justice of California.

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

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DIVISION FOUR

GENEVIEVE GRAYDON,

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F I L E D
APR 15 1980

CLAY ROBBINS, JR. Clerk

Deputy Clerk

THE COURT:*

The court has read and considered a letter dated April 9, 1980, from R. Brent Hawkins, on behalf of the firm of Jacobs, Weiser, Kane, Ballmer & Berkman, co-counsel for respondents in the above entitled matter, and a letter, dated April 9, 1980, from David K. Robinson, on behalf of the firm of Hahn & Hahn, co-counsel for said respondents. Both letters seek publication of our opinion in the above entitled case filed on March 25, 1980. A similar request by the City Attorney for the City of Pasadena was denied by our order filed on April 8, 1980. Further review of the two letters above mentioned leads us to conclude that the opinion should be published as meeting the standards set forth in Rule 976, California Rules of Court. Therefore,

IT IS ORDERED: (1) that our order of April 8, 1980, be vacated; and (2) that the opinion filed herein on March 25, 1980, be published in the official reports.

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* KINGSLEY, Acting P.J.; WONG, J.**

** Assigned by the Chief Justice of California.

NOT FOR PUBLICATION IN
THE OFFICIAL REPORTS.

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GENEVIEVE GRAYDON,

Appellant,

v.

THE PASADENA REDEVELOPMENT AGENCY, et al.,

Respondents,

ERNEST W. HAHN,

Real Party in Interest.

2 Civ. No. 56242

(Super. Ct. No. C 228013)

COURT OF APPEAL-SECOND DIST.

F I L E D

MAR 25 1980

CLAY ROBBINS, JR. Clerk

Deputy Clerk

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Charles H. Phillips, Judge. Affirmed.

Sheldon B. Chernove for Appellant

Hahn & Hahn, David K. Robinson, Jacobs, Weiser, Kane, Ballmer & Berkman, Eugene B. Jacobs and Robert P. Berkman, for Respondents.

Barrett, Stearns, Collins, Gleason & Kinney, and William N. Willens, for Real Party in Interest.

This is an appeal from a judgment and order denying a writ of mandate and awarding costs of suit to respondent, Ernest W. Hahn, Inc. (hereafter "Hahn").

Respondent The Pasadena Redevelopment Agency (hereafter sometimes "Agency" and sometimes "PRA"), following

many studies, plans and negotiations, entered into an agreement in 1975 with a developer (H-CHH Associates, a partnership comprised of respondent Hahn and Carter Hale Hawley Stores, Inc.) for the development in Pasadena's blighted central business district of a major retail shopping center.

To finance the public cost of the retail shopping center development for acquisition of land, demolition of buildings, relocation of residents and businesses, and construction of required parking facilities comprised of a subterranean garage beneath the shopping center and two above ground parking structures, the Agency sold tax allocation bonds in the principal amount of approximately $58,000,000.

On November 2, 1977, at a public meeting at which appellant was present,

Agency's governing body awarded and authorized execution of a negotiated contract for construction of the subterranean garage for the project to Hahn for a maximum price not to exceed $11,939,466 based on a commencement date of November 15, 1977. The subterranean garage is a publicly owned garage. The retail center above it will be owned by the developer constructed in air rights purchased by the developer over the garage. In its brief, respondent alleges that as of October 8, 1979 (the date of the brief), the subterranean garage was then approximately 80 percent complete.

The central issue presented on appeal is whether this action is barred by the limitation provisions of Code of Civil Procedure sections 860 through 870. (Throughout this opinion, all references to code sections will be to the Code of

Civil Procedure unless otherwise noted.)

Appellant's petition for mandamus filed on January 26, 1978, alleged, among other things, that the contract for the construction of the subterranean garage for the retail center was awarded without competitive bidding in violation of the provisions of Health and Safety Code section 33422;[1] that the contract was favorable to Hahn and unfavorable to the taxpaying public; that payment pursuant to the contract is unauthorized and a

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1/ The relevant portion of Health and Safety Code section 33422 then provided: "Any work of grading, clearing, demolition, or construction in excess of two thousand five hundred dollars ($2,500) undertaken by the agency shall be done by contract after competitive bids."

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misuse of public funds. Appellant sought a writ of mandamus which would direct the Agency to advertise for competitive bids

before awarding a contract for the construction of the subterranean garage; would declare that the contract between the Agency and Hahn was illegal; and would prohibit respondents from disbursing funds in accordance with the contract.

Appellant contends that as she framed this action in mandate, the validation requirements provided in sections 860 through 870 are inapplicable. Appellant's challenge focuses upon the procedure utilized by the Agency in obtaining the contract. In sum, she claims that sections 860 through 870 do not apply to this case.

The respondents' answers alleged that competitive bidding was not required in this case for the construction of the subterranean garage because of the integrated nature of that garage and the ma-

jor retail center; that the purposes of competitive bidding would not be accomplished and because construction of that garage without competitive bidding would be advantageous and in the public interest. Additionally, respondents alleged as affirmative defenses, among other things, that the validity of the plan and contract awarded was previously adjudicated in a prior lawsuit by appellant (Graydon v. Board of Directors, et al.); that appellant's claims were barred by her laches; that she was equitably estopped from asserting those claims; and that this action by appellant is barred because it was not filed within the time prescribed under section 860 et seq., made applicable by Government Code section 53511, and because she failed to comply with the requirements of section 860 et seq., with respect to the notice

requirements thereof.

As a general rule, competitive bidding for public entities is a mandatory requirement as provided by statute, charter or ordinance (see here Health & Saf. Code, section 33422). However, there are certain well recognized exceptions to said rule. One exception is where the nature of the subject of the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible. (Kennedy v. Ross (1946) 28 Cal. 2d 569; San Francisco v. Boyd (1941) 17 Cal. 2d 606; Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348; Los Angeles G. & E. Corp. v. Los Angeles (1922) 188 Cal. 307; Meakin v. Steveland, Inc. (1977) 68 Cal. App. 3d 490; County of Riverside v.

Whitlock (1972) 22 Cal. App. 3d 863; Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685; Orange County Water Dist. v. Bennett (1958) 156 Cal. App. 2d 745; Miller v. Boyle (1919) 43 Cal.App.39.)

The rationale for the adoption of the above exception is found in the purposes of the provisions requiring competitive bidding in letting public contracts. Those purposes are to guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent the waste of public funds; and to obtain the best economic result for the public. (10 McQuillin, Municipal Corporations (3d ed.) section 29.29.) However, the competitive bid requirement is to be construed fairly and reasonably with sole reference to the public interest and in light of the purposes to be

accomplished. (City of Inglewood-L.A. County Civic Center Auth. v. Superior Court (1972) 7 Cal. 3d 861; Cyr v. White (1947) 83 Cal. App.2d 22, 10 McQuillin, Municipal Corporations (3d ed.) section 29.29.) Therefore, it has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable. (2 Dillon, Municipal Corporations (5th ed.) section 802.)

This principle has been held applicable in California decisions in a variety of situations involving both the purchase of services and products and the construction of public improvements and

buildings where it has appeared that competitive bidding would be incongrous (sic) or would not result in any advantage to the public entity in efforts to contract for the greatest public benefit. It has also been applied in fact situations in which the governmental entity has entered into contracts for personal services depending upon a peculiar skill or ability (Kennedy v. Ross, supra, 28 Cal. 2d 569; San Francisco v. Boyd, supra, 17 Cal. 2d 606; Miller v. Boyle, supra, 43 Cal.App. 39); contracts for the purchase of patented products (Hodgeman v. City of San Diego (1942) 53 Cal. App. 2d 610); contracts for the provision of services or the construction of public improvements by a government regulated monopoly (Los Angeles G. &. E. Corp. v. Los Angeles, supra, 188 Cal. 307; County of Riverside v. Whitlock, supra, 22 Cal.

App. 3d 863); contracts for experimental or unique products and/or services (Hiller v. City of Los Angeles, supra, 197 Cal.App.2d 685); and actions or contracts for the acquisition or disposition of property for a particular use and with a special value to one person (Orange County Water Dist. v. Bennett, supra, 156 Cal.App.2d 745; Meakin v. Steveland, Inc. supra, 68 Cal. App.3d 490).

In the case at bench, the trial court determined the matter and gave notice of its intended decision by minute order of April 3, 1978, as follows:

"Matter, heretofore submitted on March 20, 1978, is now determined.

"The court, having studied all of the evidence including, without limitation, evidence bearing on respondent's statutory purpose, the manner in which it is and has been obliged to accomplish

that purpose, and the manner in which that purpose must be and has been financed, finds that the contract here in question is such that respondent's ability to operate would be substantially impaired absent a prompt validating procedure as to such contract, within the meaning of Walters v. County of Plumas, 61 Cal.App.3d 460 (1976). Accordingly, Chapter 9 of Title 10 of Part 2 of the Code of Civil Procedure (commencing with Section 860) applies, and this action is barred by the 60 day limitations of sections 863 and 860.

"Having reached that conclusion, the court makes no determinations of any other aspect of the case, except that respondent is not estopped from asserting said 60 day bar.

"This order shall constitute notice of the court's intended decision

to enter judgment for respondent, whose counsel shall prepare, serve and submit a proposed form of judgment and, if requested, proposed findings of fact and conclusions of law. The clerk is directed to mail a copy of this order to counsel for all appearing parties this date." (Emphasis added.)

Findings of fact and conclusions of law were signed and filed on June 15, 1978, over appellant's objections. Appellant's requested special findings were refused.

The findings of fact trace the history of this redevelopment project and of the financing and letting of the contracts regarding it. The findings go on with particularity stating:

"21. On November 2, 1977, the governing body of the PRA at its regular public meeting awarded and authorized

execution of a negotiated contract [i.e., the contract the validity of which is questioned in this action] for construction of the subterranean garage to Ernest W. Hahn, Inc. not to exceed a guaranteed maximum price of $11,939,466 according to the terms of said contract. Said maximum price was based on the commencement of construction date of November 15, 1977, and the amount of $11,335,360 provided for in the First Implementation Agreement plus the sum of $595,068 which sum represents $56,676.80 per month for the period between January 1, 1977, and November 15, 1977. Petitioner was present at said PRA regular meeting of November 2, 1977, and was thus aware of the award and authorization of said contract. The award of the contract was made in reliance upon a written opinion dated October 4, 1977, of the Law

Offices of Eugene B. Jacobs, General Counsel to the Agency, that the competitive bidding requirements of Health and Safety Code Section 33422 were not applicable to the construction contract for the subterranean garage which is to be the support for and integrated with and provide access to the Retail Center. (Emphasis added.)

"22. On December 15, 1977, the PRA sold and awarded $26 million tax allocation bonds to finance the construction by the PRA of the public parking facilities for the Retail Center. The official statement with respect to said bonds stated that the contract identified in Finding No. 21 had been awarded in reliance of the opinion identified in Finding No. 21. The bonds are to be paid partially from tax increments generated by the Retail Center which will begin to

flow when the Retail Center is constructed.

"23. The PRA's statutory purpose, pursuant to the Community Redevelopment Law, the Plan and the purpose and intent of the City of Pasadena with respect to the Plan and the Downtown Redevelopment Project is to eliminate the conditions of blight in the Downtown Redevlopment Project Area and to redevelop said area pursuant to the Plan. The contract identified in Finding No. 21 is directly linked to and is part of the PRA's /Agency's/ method of financing the public costs of the Retail Center and the redevelopment of the Downtown Redevelopment Project Area, the purpose of the PRA in the implementation of the Plan and the manner in which such purpose of the PRA must be financed and has been financed. The ability of the PRA to operate and

accomplish its statutory purpose and the purposes of the Plan would be substantially impaired unless the contract identified in Finding No. 21 is subject to a prompt validation procedure. (Emphasis added.)

"24. The contract identified in Finding No. 21 is a contract to the validation procedures contained in Chapter 9 (commencing with Section 860) of Article 10 of Division 1 of the Code of Civil Procedure. Any action by an interested person challenging the validity of said contract must be brought within 60 days after the PRA awarded and authorized the contract identified in Finding No. 21 which was on November 2, 1977.

"25. There is no evidence of any acts of the PRA which would estop the PRA from asserting the bar of the 60 day

statute of limitation under Code of Civil Procedure Section 860 and 863.

"26. This action was commenced on January 26, 1978, which is 85 days after the award, on November 2, 1977, of the contract identified in Finding No. 21."

We proceed now to discuss the applicable code sections.

Government Code section 53511 provides that a local agency may bring an action to determine the validity of its bonds, warrants, contracts and evidence of indebtedness pursuant to chapter 9 (commencing with section 860) of title 10 of Part 1 of the Code of Civil Procedure. Government Code section 53511 defines local agency as any city, county, city and county, public district or any public or municipal corporation, public agency or public authority. Agency is a local

agency within the meaning of Government Code section 53510.

Section 860 provides that a public agency may bring an action to determine the validity of any matter which was authorized to be determined pursuant to chapter 9 of title 10 of part 1 of the Code of Civil Procedure. Section 864 provides that for the purposes of said chapter 9 of title 10 of part 1 of the Code of Civil Procedure, contracts shall be deemed to be in existence upon the date of their authorization and that contracts shall be deemed authorized as of the date of adoption by the governing agency of the public agency of a resolution approving the contract and authorizing its execution.

Section 863 provides that if no action has been brought by the public agency pursuant to chapter 9 of title 10

of part 2 of the Code of Civil Procedure to determine the validity of a matter within 60 days after the existence of a matter, any interested person may bring an action, within the time prescribed by section 860 (i.e., 60 days), to determine the validity of the matter.

Appellant contends that reversal is required because of the failure of the trial court to find on a material fact after a request for special findings on that fact. Appellant's contention is that, as no resolution or ordinance was adopted with respect to the authorization or execution of the contract here in question, the limitation period did not start to run. The transcript of the hearing before the trial court of March 7, 1978, wherein Michael V. McIntire appeared as attorney for appellant, contains the following colloquy:

"MR. McINTIRE: Excuse me, Your Honor. May I interrupt for a moment with respect to one of those facts.

"The resolution authorizing the contract was passed on November 2, but the contract, which is Exhibit 1 to the respondent's answer, discloses that the contract was signed on February 8.

"THE COURT: All right.

"MR. JACOBS [attorney for respondent]: That's right, Your Honor.

"THE COURT: If you are all in agreement as to that, then I will amend my statement.

"Do you agree with that fact?

"MR. McINTIRE: Yes, Your Honor. I have no reason to dispute it.

"THE COURT: All right.

"MR. JACOBS: It was actually signed at that point. It was signed as of November 2. The authorization took place

on November 2.

"THE COURT: Well, the resolution was adopted November 2.

"MR. JACOBS: November 2, yes, Your Honor.

"MR. BERKMAN: Yes, Your Honor.

"MR. McINTIRE: Yes, Your Honor."

Even if counsel for appellant was wrong in his March 7, 1978 statement that there was a resolution passed November 2, 1977, authorizing the contract here in dispute and the matter was passed only by motion of the governing body of the Agency, the result would be the same as if a formal resolution or ordinance had been passed.

The aforementioned finding number 21 that "On November 2, 1977, the governing body of the PRA [Agency] at its regular public meeting awarded and au-

thorized execution of a negotiated contract for construction of the subterranean garage to Ernest W. Hahn, Inc. . . ." is correctly dispositive of the issue. In Smith v. Mt. Diablo Unified Sch. Dist. (1976) 56 Cal. App.3d 412, the Court of Appeal held (at pp. 416-417) that a motion passed by the governing body of a public entity was the requisite approval of the contract and authorization of its execution, "as a motion, is the equivalent of a resolution under such circumstances" in the following language:

"At the time the written bid was accepted by the Board at its January 29 meeting, a contract was formed. (United States v. Purcell Envelope Co., 249 U.S. 313, 319-320 [63 L.Ed. 620, 624-625, 39 S.Ct. 300]; Berkeley Unified Sch. Dist. v. James I. Barnes Const. Co., 112 F. Supp. 396, 398-399; City of Susanville

v. Lee C. Hess Co., 45 Cal.2d 684, 694 [290 P.2d 520] 15 Ops. Cal. Atty. Gen. 123, 125.) The motion of the Board, passed by a vote of four to one, was therefore the requisite approval of the contract and authorization of its execution, as a motion, is the equivalent of a resolution under such circumstances. (5 McQuillin, Municipal Corporations (1969 rev. vol.) section 15.02, pp. 43-45, section 15.06, pp. 56-58, section 15.08, pp. 63-65; cf. City of Sausalito v. County of Marin, 12 Cal.App.3d 550, 565-566 [90 Cal. Rptr. 843]; McPherson v. Richards, 134 Cal.App. 462, 466 [25 P.2d 534].)" (Emphasis added.)

We here hold, as the court did in Smith v. Mt. Diablo Unified Sch. Dist., supra, 56 Cal.App.3d 412, that the award and authorization for the execution of the contract at the November

2, 1977 regular public meeting of Agency's governing body was the equivalent of a resolution under such circumstances. Alternatively, appellant's attorney conceded at the March 7, 1978 hearing in the trial court that the resolution was passed, and thus in either event we hold that no material fact was omitted from the findings of fact regarding the award and authorization of the contract in question.

We next consider the applicability of the validation sections (860 through 870) as a bar to this action. The award and authorization was made at the regular public meeting of Agency's governing body on November 2, 1977, at which meeting appellant was present and aware of the award and authorization of this contract. If sections 860 through 871 apply to contracts of this nature,

the contract was in existence as of November 2, 1977, within the meaning of section 864, which provides in pertinent part: ". . . contracts . . . shall be deemed to be in existence upon their authorization . . . and contracts shall be deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance approving the contract and authorizing its execution."

The heart of the dispute between appellant and respondent focuses on whether this is a "contract" of the type intended to be covered by the provisions of sections 860, 863, 864 and 869.

Smith v. Mt. Diablo Unified Sch. Dist., supra, 56 Cal.App.3d 412, analyzing the type of contracts intended to be covered by sections 860 through 871, reviews the applicable cases and comments

as follows (at pp. 418-420):

"Only two cases have previously analyzed the precise statutes in issue here. Phillips v. Seely, 43 Cal. App. 3d 104 [117 Cal. Rptr. 863], was a taxpayers' action challenging the validity of a contract between a county board of supervisors and a private party for the rendition of legal services. The court unanimously held that 'the contract for rendition of legal services to the county by Warren was not subject to sections 860 and 863,' in spite of the language of Government Code section 53511. (43 Cal. App.3d at pp. 111, 112.)

"This result in Phillips rested almost entirely upon certain dicta in the Supreme Court opinion in City of Ontario v. Superior Court, 2 Cal. 3d 335 [85 Cal. Rptr. 149, 466 P.2d 693]. In that decision, the court considered at length the

question presented in the instant action, but decided the case on the ground that the 'complex and debatable' issue of applicability at least constituted the 'good cause' required by section 863 of the Code of Civil Procedure for relief from default (for failure to comply with the summons procedure of the validating statutes). (2 Cal.3d at pp. 345-347.) Although not controlling, the dicta is entitled to substantial weight, particularly in view of its thoroughness. (San Joaquin etc. Irr. Co. v. Stanislaus, 155 Cal. 21, 28 [99 Cal.Rptr. 365]; Granger v. Sherriff, 133 Cal. 416, 417 [65 P. 873]; In re Olson, 37 Cal.App.3d 783, 789 [112 Cal.Rptr. 579].)

"It is clear that the language of Government Code section 53511, while perhaps appearing unambiguous and unqualified, cannot be so deemed in view

of the legislative background. It is true that where the meaning of a statute is plain and unambiguous, and there is no uncertainty as to legislative intent, there is no need for construction and courts should not indulge in it. (Caminetti v. Pac. Mutual L. Ins. Co., 22 Cal.2d 344,354 [139 P. 2d 908].) However, '"The literal meaning of the words of a statute may be disregarded . . . to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole."' (County of Sacramento v. Hickman, 66 Cal. 2d 841, 849, fn. 6 [59 Cal.Rptr. 609, 428 P.2d 593], quoting Silver v. Brown, 63 Cal.2d 841, 845 [48 Cal.Rptr. 609, 409 P.2d 689].)

"The Supreme Court enumerated in City of Ontario, various aspects of

the legislative history suggesting inapplicability of the validating statutes to contracts of the type here in question. Certain other features of that historical background, however, suggest an opposite interpretation. Most of the statutes enacted simultaneously with the validating act included language involving bonds and assessments. Some, however, referred to validation of contracts; although most of these latter concerned contracts with other -- often federal -- agencies, some involved contracts of acquisition and construction.

"Thus, Water Code section 43730 was enacted (Stats. 1961, ch. 1531, p. 3367), and its reference to 'contracts . . . or the taking of any other action by the district or by the board' clearly encompasses powers previously granted to enter into contracts of construction or

improvement. (Wat. Code, sections 43300-43309.) Streets and Highways Code section 5265 (Stats. 1961, ch. 1523, p. 3361), likewise relating to 'the validity of any contract,' has reference to prior sections dealing with contracts for construction, and for acquisition of materials, supplies and equipment. (Sts. & Hy. Code, section 5240 et seq.) Similarly, Streets and Highways Code section 10601 (as amended by Stats. 1961, ch. 1526, p. 3364) relates in part to contracts for construction of improvements. (Sts. & Hy. Code, section 10500 et seq.) Similar language in the numerous uncodified Water Act provisions enacted simultaneously with Code of Civil Procedure sections 860-870 reaffirms the conclusion that, at least in certain instances, the Legislature understood the word 'contracts' in section 864 to include matters

other than 'the limited topic of a local agency's financial obligations.' (City of Ontario, supra, 2 Cal.3d at p. 344.)

"This is not dispositive of the issue, however, for it must be apparent that 'contracts' as used in section 864 had no static meaning. Rather, the term must be defined by the legislative context in which it appears in particular follow-up enactments. [Emphasis in original.] Thus, although the unqualified word 'contract' is utilized in a number of the statutes created simultaneously with the validating act, it is clear that in some of these sections no broad meaning is intended or even possible. (See e.g., Wat. Code, sections 23225, 35855.) The Supreme Court's admonition that 'under well-known canons of statutory interpretation, [the language of Gov. Code, section 53511] . . . should ordi-

narily be given the same meaning as it had in the earlier statute [section 864]' (City of Ontario, supra, 2 Cal. 3d at p. 343) is therefore of little guidance in construing Government Code section 53511." (Emphasis added.)

Walters v. County of Plumas (1976) 61 Cal.App.3d 460, involved an action by a taxpayer against a county arising out of the implementation of a solid waste disposal program. Plaintiff's complaint sought to invalidate franchises for impropriety in bidding and award procedures and by its third cause of action to set aside a guarantee agreement by the county to assist the franchisees in financing the purchase of heavy equipment to be used in carrying out the purpose of the plan. After holding chapter 9 (i.e., sections 860 through 871) inapplicable to the matters pleaded

in other causes of action, the Walters court at page 468 considered the third cause of action stating: "We perceive the essential difference between those actions which ought and those which ought not to come under chapter 9 to be the extent to which the lack of a prompt validating procedure will impair the public agency's ability to operate. The fact that litigation may be pending or forthcoming drastically affects the marketability of public bonds; it has little effect upon such matters as a contract with a public defender or the purchase of a computer. We feel that the possibility of future litigation is very likely to have a chilling effect upon potential third party lenders, thus resulting in higher interest rates or even the total denial of credit, either of which might well impair the county's

ability to maintain an adequate waste disposal program. Accordingly, we hold that Code of Civil Procedure sections 860-870 are applicable to the third cause of action."

The trial court in the case at bench considered the evidence of respondents' statutory purpose, the manner in which it had been and is obliged to carry out its purpose and the manner in which that purpose must be, and is, being financed, found that the questioned contract is such that respondents' ability to operate would be substantially impaired absent a prompt validating procedure as to such contract, and accordingly, held that chapter 9 of title 10 of part 2 of the Code of Civil Procedure (commencing with section 860) applies, and that this action is barred by the 60-day limitations of sections 860 and 863.

We agree. The negotiated contract for the construction of the subterranean garage is an integral part of the whole method of financing the public costs associated with the retail center. The financing is by bonds issued by the Agency to be paid from tax increments allocated to the Agency. The record indicates that if completion of the retail center was delayed beyond March 1, 1980, because of delay in commencement of construction, a loss of tax increment revenue of $1,556,000 would result for the 1981-1982 fiscal year. There was evidence that if the contract were competitively bid, a delay of approximately 14 months would have resulted. It is uncontroverted that a considerable delay would have resulted. The ability of the Agency to pay its bonds, dependent in large part upon the flow of tax increment

monies resulting from the completion of the retail center, was thus directly linked to the award of the questioned contract.

A considerable delay, and certainly one of 14 months, would impair the ability of the Agency to pay the bonds and to operate and carry out the redevelopment plan. The contract is inextricably bound to the Agency's financial obligations. On December 15, 1977 (approximately six weeks after awarding this contract), the official statement with respect to the bonds in the amount of $26,000,000 sold and awarded on December 15, 1977, stated that the contract had been authorized and awarded on November 2, 1977, based upon the opinion of the Agency's general counsel that the bidding requirements were not applicable to the contract for the construction of

the subterranean garage. These bonds were intimately and inextricably bound up with the award of this contract. Delay in the completion of the retail center because of the delay which would inevitably have resulted if the contract had been competitively bid and would have had a direct bearing on the financial ability of Agency to meet its financial obligations and statutory purpose.

These conclusions compel the result we reach here. The lack of a prompt validating procedure would impair this public agency's ability to operate and carry out its statutory purpose. We hold that chapter 9 of title 10 of part 2 of the Code of Civil Procedure (commencing with section 860) applies and that this action, which was not commenced until January 26, 1978, more than 60 days after the contract came into existence on

November 2, 1977, is barred by the 60-day limitation provisions of sections 860 and 863.

Respondents are not estopped from asserting the bar of the 60-day limitations. Appellant was present at the regular public meeting of the governing body of Agency, when the contract was awarded and its execution authorized. She knew of its existence on that date and there is no evidence in the record to show that she delayed filing her petition for the writ in reliance on anything said or done by respondents.

Appellant's motion to tax costs is not well taken. Appellant contends the costs arose out of a result of the trial court's refusal to allow testimony in open court.

At all times relevant, rule 106 of the Manual of Policy and Procedures

for the Writs and Receivers Department of the Superior Court of Los Angeles County provided that mandamus proceedings brought under section 1085 "involve presentation of evidence for the first time at the mandamus trial" (appellant's counsel having stated in open court on March 7, 1978, that this was a mandamus proceeding under section 1085). Rule 106 provided further that : "Usually, evidence counsel contemplates eliciting at the trial can be obtained by way of declarations, affidavits or stipulations . . . and because of the limited time available to hear these matters in Department 85, it is requested that counsel so obtain the evidence, if at all possible. . . . This procedure can save both counsel a great deal of time." This rule was available to counsel for appellant well before March 7, 1978.

When the method of taking evidence by way of declarations, affidavits and depositions was announced by Judge Phillips, no objection was made by counsel to this procedure.

Further, and most significantly, the respondents, not appellant, were the prevailing parties. (section 1033.)

The foregoing determinations obviate the necessity of discussing the other issues raised.

The judgment and order are affirmed.

No party shall recover costs from the other in this court.

NOT FOR PUBLICATION IN THE OFFICIAL REPORTS

McCLOSKY, J.*

We concur:

KINGSLEY, Acting P.J.

WONG, J.*

---

* Assigned by the Chief Justice of California.

CLERK'S OFFICE, SUPREME COURT

4250 State Building
San Francisco, California 94102

6/4/80

I have this day filed Order

Hearing denied

In re: 2 Civ. No. 56242

Graydon

vs.

Pasadena Redev. Agency

Respectfully,

Clerk

(Stamps) 8 C and 7

Postmarked San Francisco, Calif.

Jun-4'80

Addressed to:

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No. 80-438

IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
OCT 17 1980
MICHAEL RODAK, JR., CLERK

October Term, 1980

GENEVIEVE GRAYDON,

Petitioner,

vs.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

On Petition for Writ of Certiorari to
The Court of Appeal of the State of California
Second Appellate District.

BRIEF FOR RESPONDENT IN OPPOSITION.

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IN THE

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October Term, 1980

GENEVIEVE GRAYDON,

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Respondent,

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Real Party in Interest.

On Petition for Writ of Certiorari to
The Court of Appeal of the State of California
Second Appellate District.

BRIEF FOR RESPONDENT IN OPPOSITION.

Questions Presented.

1. Has Petitioner seasonably raised any questions of federal law so as to confer upon this Court jurisdiction under 28 U.S.C. §1257 (3)?
2. Was Petitioner's Petition for Writ of Certiorari timely filed with this Court?
3. Has Petitioner complied with the rules of this Court pertaining to the content and filing of petitions for Writ of Certiorari?

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Opinion Below.

The opinion of the Court of Appeal of the State of California, Second Appellate District, is reported as *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal. App. 3d 631, 164 Cal. Rptr. 56. Petitioner's petition for a hearing before the California Supreme Court was denied by order dated June 14, 1980. A copy of the aforementioned opinion and a typewritten facsimile of the notice of the aforementioned order are printed as appendices to Petitioner's Petition for Writ of Certiorari.

Jurisdiction.

There is a defect of jurisdiction over the subject matter of the questions sought to be raised by Petitioner. Petitioner has failed to state the grounds on which the jurisdiction of this Court is invoked. However, the provisions of 28 U.S.C. §1257 (3) govern jurisdictional questions on petition for Writ of Certiorari. Petitioner apparently claims that the Statute of Limitations contained in California Code of Civil Procedure Section 860 et seq. is unconstitutional in that it violates "a citizen's right to petition under the First Amendment and the rights to due process and equal protection under the Fifth and Fourteenth Amendments . . . " Petitioner has failed to show, however, that this question or any other federal question was raised before the courts of the State of California. The question of the repugnancy of California Code of Civil Procedure Section 860 et seq. to the federal Constitution or any other provision of federal law was never raised by Petitioner at any stage of the proceedings before the California courts. Consequently, no California court has adjudicated the Constitutional questions which are raised in this Court for the first time. It is therefore submitted that jurisdiction is lacking. Secondly, the California court's decision rests entirely on state law grounds.

On each of these two grounds it is submitted that jurisdiction is lacking *(Chicago I. & L.R. Railway Co. v. McGuire* (1905) 196 US 128, 130-133, 49 L. Ed. 413, 25 S. Ct. 200; *Godchaux Co. v. Estopinal* (1919) 251 US 179, 180-181, 64 L. Ed. 213, 40 S. Ct. 116; *Wall v. Chesapeake & Ohio Railway Company* (1921) 256 US 125, 126, 65 L. Ed. 856, 41 S. Ct. 402; *Rooker v. Fidelity Trust Co.* (1923) 261 US 114, 116-117, 67 L. Ed. 556, 43 S. Ct. 288; *Herndon v. Georgia* (1935) 295 US 441, 443, 79 L. Ed. 1530, 55 S. Ct. 794; *Herb v. Pitcairn* (1945) 324 US 117, 125, 89 L. Ed. 789, 65 S. Ct. 459; *Ellis v. Dixon* (1955) 349 US 458, 460, 99 L. Ed. 1231, 75 S. Ct. 850; *Cardinale v. Louisiana* (1969) 394 US 437, 438-9, 22 L. Ed. 2d 398, 89 S. Ct. 1162; *Tacon v. Arizona* (1973) 410 US 351, 352, 35 L. Ed. 2d 346, 93 S. Ct. 998; Moore, *Federal Practice* (2d.ed.), vol. 12, §§510.01, 511.01, 512.01.)

As stated in *Chicago I. and L.R. Railway Co. v. McGuire* (1905) 196 US 128, 133, 49 L. Ed. 413, 417, 25 S. Ct. 200:

> "This case is the not infrequent one of an attempt to clutch at the jurisdiction of this court as an afterthought, when all resources of litigation have been exhausted."

Petitioner's case is a classic example of the above quotation.

Other questions raised by Petitioner essentially re-state and re-argue issues of state law decided by the Courts below solely on the basis of the interpretation of California law. Such questions fail to confer jurisdiction on this Court inasmuch as they contain no questions of federal law.

Statement of the Case.

In February, 1975, Respondent and H-CHH Associates ("Developer"), a limited partnership, composed of Real Party in Interest and Carter Hawley Hale Stores, Inc., approved and executed a Disposition and Development Agreement ("DDA") for the construction in the Pasadena Down-

town Redevelopment Project of an enclosed retail shopping mall and appurtenant public parking facilities (Clerks Transcript, "C.T.", p. 726). Under the DDA, Respondent acquired the designated site, relocated the occupants, performed demolition and clearance and then conveyed a portion of the site consisting of an air rights parcel, to Developer for construction of the shopping mall. On the portion of the site retained by Respondent, Respondent has constructed three public parking garages. Two of these structures are located adjacent to the mall, across the public right-of-way and are connected to the mall by pedestrian bridges. Contracts for construction of these two structures were competitively bid. The third structure is a subterranean garage located directly beneath the shopping mall (C.T. pp. 726-727). The publicly owned subterranean garage and the privately owned shopping mall are a single structure, with completely integrated footings, foundations and support, interconnecting stairways, escalators and elevators, etc. (C.T. pp. 28-31, 32-4 and 41-43).

Recognizing the integrated nature of the shopping mall and the subterranean garage and the time delays and increased costs which would accrue if the two were constructed simultaneously by two different contractors, the DDA stated that it was the desire of Respondent, subject to legal requirements, to negotiate with Developer's general contractor, Ernest W. Hahn, Inc. (Real Party in Interest) for the construction of the subterranean garage, based on a stated guaranteed maximum price (C.T. p. 729). On November 2, 1977, at a meeting at which Petitioner was present, Respondent awarded the contract for construction of the subterranean garage to Real Party in Interest without having competitively bid the contract. This act was taken in reliance upon a full written legal opinion of Respondent's general counsel that the contract for construction of the

subterranean garage was not subject to the competitive bidding requirements of California Health & Safety Code Section 33422, since California law clearly establishes that notwithstanding statutory provisions to the contrary, competitive bidding is not required where competitive proposals would be unavailing, not produce an advantage, and would be undesirable, impractical or impossible (C.T. pp. 730-731).

This action was brought on January 26, 1978, by the filing of a Petition for Writ of Mandamus in Superior Court of Los Angeles County (C.T. p. 1). The allegations of that petition are set forth in Petitioner's Petition for Writ of Certiorari, at pages two through six. The Petition for Writ of Mandamus essentially states that Petitioner is a resident and taxpayer of the City of Pasadena, California, sets forth the fact of the award of the contract for construction of the subterranean garage without competitive bidding, cites the provisions of Health & Safety Code Section 33422 and alleges: (1) that award of the Parking Garage Contract to Hahn without competitive bidding is illegal, (2) that such contract is "null and void", and (3) that payment from Respondent to Real Party in Interest of public funds pursuant to the provisions of such contract is unauthorized and a misuse of public funds. Petitioner then prays for relief (1) directing Respondent to advertise for competitive bids, (2) declaring the subject contract illegal, and (3) prohibiting Respondent from disbursing any funds under such contract. Petitioner nowhere alleged violation of any federal constitutional or statutory rights. The Petition for Writ of Mandamus is founded entirely upon California law.

In answer to the Petition for Writ of Mandamus, Respondent set up the bar of the Statute of Limitations contained in California Code of Civil Procedure Sections 860-870, made applicable by the provisions of California Government

Code Section 53511 (C.T. p. 82). These sections establish a procedure for validating contracts and other actions of public agencies and contain a 60 day Statute of Limitations, running from the date of authorization of the contract, for actions brought contesting the validity of bonds, warrants, contracts, obligations or evidences of indebtedness to which such statutory provisions are applicable.

The Superior Court of Los Angeles County held the action barred by the Statute of Limitations contained in California Code of Civil Procedure Sections 860-870 (C.T. p. 737). No federal questions were raised or adjudicated in Superior Court.

The judgment of the Superior Court was sustained by the Court of Appeal of the State of California, Second Appellate District in *Graydon v. Pasadena Redevelopment Agency* 104 Cal. App. 3d 631, 164 Cal. Rptr. 56, wherein the Court of Appeal expressly recognized that in addition to Petitioner's action being barred by the State of Limitations, this was a case in which competitive bidding was not required. No federal questions were raised or adjudicated before the Court of Appeal. The decision of that court rested solely on state law.

Petitioner's Petition for a hearing before the California Supreme Court, which again was based solely on matters of California law and presented no federal questions whatever, was denied by order dated June 4, 1980. A typewritten facsimile of the notice of that order is included in the appendix to the Petition for Writ of Certiorari.

On or about August 18, 1980, Petitioner submitted to this Court a Petition for Writ of Certiorari which was returned to Petitioner by this Court shortly thereafter for failure to comply with the rules governing submission of such petitions. Thereafter, on September 19, 1980, Petitioner sub-

mitted to this Court a second, virtually identical Petition for Writ of Certiorari, again dated August 18, 1980, but containing certain additional appendices. This second petition was served on Respondents September 18, 1980. The notice of the date of filing and docket number required by Rule 19.3 of the rules of this Court was not received by Respondent until October 2, 1980.

The subterranean garage, the two adjacent garages and the retail shopping center are now constructed, fully operational and have been in use since August, 1980. This entire matter is therefore moot.

ARGUMENT.

A. This Court Lacks Jurisdiction of the Subject Matter of the Questions Sought to Be Presented by Petitioner.

Petitioner has attempted in her Petition for Writ of Certiorari before this Court to raise for the first time questions of federal law. An examination of Petitioner's Petition for Writ of Mandamus, the Findings of Fact and Conclusions of Law of the Superior Court of Los Angeles County and the opinion of the California Court of Appeal (all of which are reproduced in the Petition for Writ of Certiorari) and the entire record in this case disclose no previous mention whatever of any federal statutory or constitutional questions. In her Petition for Hearing before the California Supreme Court, again, no questions of federal law were raised.

The decisions of the courts below are based exclusively on matters of California law. This case was decided, both in Superior Court and the Court of Appeal, on questions relating to the applicability and operation of the Statute of Limitations contained in California Code of Civil Procedure Section 863. By denying Petitioner's Petition for Hearing, the California Supreme Court confirmed that the principles on which this case was decided below are well-settled in California law. No California court has ruled on the alleged federal constitutional questions presented in Petitioner's Petition for Writ of Certiorari.

Few principles are more firmly established than that the United States Supreme Court will not pass on a constitutional question presented to it on appeal from a state court judgment where the state court has not had an opportunity to rule on the question (*Cardinale v. Louisiana* (1969) 394 US 437, 438-9, 22 L. Ed. 2d 398, 89 S. Ct. 1162). A litigant must both raise the constitutional question in the

trial court and preserve the question on appeal through the state courts (*Bailey v. Anderson* (1945) 326 US 203, 90 L. Ed. 3, 66 S. Ct. 66). Where the federal question is not raised below, or called to the attention of, or decided by the state court, the United States Supreme Court is without jurisdiction to review the judgment (*New York ex rel. Rosevale Realty Co. v. Kleinert* (1925) 268 US 646, 69 L. Ed. 1135, 45 S. Ct. 618; *Missouri P.R. Co. v. Hanna* (1924) 266 US 184, 69 L. Ed. 235, 45 S. Ct. 36; *Cardinale v. Louisiana* (1969) 394 US 437, 438-9, 22 L. Ed. 2d 398, 89 S. Ct. 1162; *Tacon v. Arizona* (1973) 410 US 351, 352, 35 L. Ed. 2d 346, 93 S. Ct. 998; Moore, *Federal Practice*, (2d ed.), vol. 12 §510.01). This rule has been held to preclude the exercise of jurisdiction by this Court even where the federal question was raised before the state court of highest jurisdiction on a petition for re-hearing before such court (*Rooker v. Fidelity Trust Co.* (1923) 261 US 114, 116-117, 67 L.Ed. 556, 43 S. Ct. 288).

In *Cardinale v. Louisiana* (1969) 394 US 437, 438, 22 L. Ed. 2d 398, 400, 89 S. Ct. 1162, this Court stated:

> "Although certiorari was granted to consider this question, the fact emerged in oral argument that the sole federal question argued here had never been raised, preserved, or passed upon in the state courts below. It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions. In Crowell v. Randell, 10 Pet 368, 9 L 9 L Ed 458 (1836), Justice Story reviewed the earlier cases commencing with Owings v. Norwood's Lessee, 5 Cranch 344, 3 L Ed 120 (1809), and came to the conclusion that the Judiciary Act of 1789, c 20 §25, 1 Stat 85, vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below. "If both of these do not appear on the record, the appellate jurisdiction fails." 10 Pet 368, 391, 9 L Ed 458, 467.

The Court has consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions both before the Crowell opinion, Miller v Nicholls, 4 Wheat 311, 315, 4 L Ed 578, 579 (1819), and since, e.g. Safeway Stores, Inc. v Oklahoma Retail Grocers Assn., Inc., 360 US 334, 342, n. 7, 3 L Ed 2d 1289, 1286, 79 S Ct 1196 (1959); State Farm Mutual Automobiles Ins. Co. v. Duel, 324 US 154, 160-163, 89 L Ed 812, 817-819, 65 S Ct 573 (1945); McGoldrick v Compagnie Generale Transatlantique, 309 US 430, 434-435, 84 L Ed 849, 851-852, 60 S Ct 670 (1940); Whitney v California, 274 US 357, 362-363, 71 L Ed 1095, 1100-1101, 47 S Ct 641 (1927); Dewey v Des Moines, 173 US 193, 197-201, 43 L Ed 665, 6670-668, 19 S Ct 379 (1899); Murdock v City of Memphis, 20 Wall 590, 22 L Ed 429 (1875).

In addition to the question of jurisdiction arising under the statute controlling our power to review final judgments of state courts, 28 USC §1257, there are sound reasons for this. Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds. O'Connor v. Ohio, 385 US 92, 17 L Ed 2d 189, 87 S Ct 252 (1966), they should be given the first opportunity to consider them."

Furthermore, even if a federal question had been raised in a state court, if the state court decision rests on adequate state grounds, the Supreme Court has no jurisdiction

(Moore, *Federal Practice* (2d ed.), vol. 12, §511.01; *Ellis v. Dixon* (1955) 349 US 458, 460, 99 L. Ed. 1231, 75 S. Ct. 850). Justice Jackson, in *Herb v. Pitcairn* (1945) 324 US 117, 125, 89 L. Ed. 789, 65 S. Ct. 459, stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [Citations omitted.] The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction."

A review of the opinion of the District Court Appeal shows it rests entirely on adequate and independent state grounds.

Even if Petitioner had raised a federal question in the state courts, which she did not, and even if the state court had ruled on such question and based its ruling on it and not on independent state grounds, which it did not, the Supreme Court does not have jurisdiction if the federal question is not substantial (*Zucht v. King* (1922) 260 US 174, 67 L. Ed. 194, 43 S. Ct. 24; Moore, *Federal Practice* (2d ed.), vol. 12, §512.01). It is submitted that the federal question raised by Petitioner for the first time in this Court is not substantial.

Petitioner having failed to raise and preserve any federal question and the state court decision resting on adequate and independent state grounds, this Court lacks jurisdiction over the subject matter of the federal constitutional questions now sought to be raised. Other contentions presented by Petitioner as a "LIST OF CORRECTIONS IN SUPPORT OF PETITIONER", do not even purport to contain questions of federal law. Such contentions relate primarily to Petitioner's allegations in her Petition for Writ of Mandamus that the award of the contract for construction of the sub-

terranean garage contravenes state competitive bidding requirements. These issues were not adjudicated in the California courts, as they were held barred by the operation of the Statute of Limitations. Even if such questions had been adjudicated, jurisdiction would not thereby be conferred on this Court, since such questions relate solely to matters of state law and contain no federal questions.

Respondent therefore submits that this Court should deny Petitioner's Petition for Writ of Certiorari for lack of jurisdiction over the subject matter.

B. Petitioner's Petition for Writ of Certiorari Was Not Timely Filed Before This Court.

The Rules of the Supreme Court of the United States ("Rules"), Rule 20.2, require that a petition for Writ of Certiorari be filed within 90 days after entry of judgment. The time for filing a petition for Writ of Certiorari runs from the date the judgment or decree sought to be reviewed is rendered (Rule 20.4). The California Supreme Court denied Petitioner's Petition for Hearing on June 4, 1980, rendering final the judgment of the Court of Appeal (California Rules of Court, Rule 24(a)). On or about August 25, 1980, Petitioner filed with this Court a petition for Writ Certiorari, dated August 18, 1980. On or about August 18, 1980, Respondent received in the mail three copies of such petition. Shortly thereafter attorneys for Respondent learned by telephone conversation with the Clerk of this Court, that Petitioner's Petition had been returned to her for failure to comply with the Rules. This was accomplished by letter dated August 27, 1980. On September 18, 1980, attorneys for Respondent again received in the mail three copies of a second Petition for Writ of Certiorari. This petition contained the earlier petition, dated August 18, 1980 and in addition, a list of "Questions Presented" and certain orders and opinions of the California Courts attached as an appendix. This second Petition for Writ of Certiorari was filed with this Court on September 19, 1980. Not until October

2, 1980, did attorneys for Respondent received the notice of filing and docket number required by Rule 19.3. That notice listed the date of filing of the Petition for Writ of Certiorari as August 25, 1980. It is apparent that August 25, 1980 could not be the date of filing of the second petition, since the first petition was not returned to Petitioner until August 27, 1980.

Respondent's second Petition for Writ of Certiorari having been filed on September 19, 1980, and therefore more than 90 days from the date of judgment, Respondent submits that this Court should deny Petitioner's Petition for Writ of Certiorari as not having been timely filed.

C. Petitioner's Petition for Writ of Certiorari Is Defective Under the Rules.

This Court should deny Petitioner's Petition for Writ of Certiorari for failure to comply with Rule 21. The following is a listing of the defects of said petition:

1. The petition lacks a reference to the official report of the opinion of the California Court of Appeal, Second District, as required by Rule 21.1(d).
2. The petition lacks a concise statement of the grounds on which the jurisdiction of this Court is invoked (Rule 21.1(e)), inasmuch as Petitioner fails to cite the statutory provision believed to confer on this Court jurisdiction to review the judgment in question by Writ of Certiorari (Rule 21.1(e)(iv)).
3. The petition fails to comply with the provisions of Rule 21.1(f) requiring the setting out verbatim of the constitutional provisions, etc., which the case involves.
4. The petition lacks a concise statement of facts (Rule 21.1(g)).

5. The petition fails to specify the stage in the proceedings at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way they were passed upon by the Court, with appropriate citations to the record, so as to show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on Writ of Certiorari (Rule 21.1(h)). The petition cannot be amended to comply with this rule, since, as set forth above, no federal questions were raised before the California courts.
6. The petition lacks the statement amplifying the reasons relied on for allowance of the writ required by Rule 21.1(j).
7. The petition fails to present with accuracy, brevity, and clearness the matters essential to a ready and adequate understanding of the points requiring consideration (Rule 21.5).

Conclusion.

Petitioner failed to properly raise and preserve in the California courts the federal constitutional questions which are advanced in the petition, creating a fatal jurisdictional defect. The opinion of the California Court of Appeal rests entirely on adequate and independent state grounds, likewise creating a fatal jurisdictional flaw. Other matters advanced by Petitioner contain no federal questions. This Court therefore lacks jurisdiction over the subject matter of this case.

Additionally, the Petition for Writ of Certiorari was not timely filed and contains numerous serious defects of both form and substance.

Finally, Petitioner has included in her Petition for Writ of Certiorari many comments and contentions which are

both self-serving and outside the record. Because of the jurisdictional defects in the petition, Respondent has chosen not to respond to each of such comments and contentions. By so doing, Respondent does not agree with or acquiesce in any of Petitioners contentions. Respondent beleives that a full and fair account of this case is contained in the opinion of the California Court of Appeal.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
OCT 30 1980
MICHAEL RODAK, JR., CLERK

No. 80-438

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GENEVIEVE GRAYDON,

Petitioner,

v.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

REPLY BRIEF

GENEVIEVE GRAYDON, in Propria Persona
99 South Raymond Avenue
Pasadena, California 91105
(213) 793-5429 Petitioner

LIST OF PARTIES

GENEVIEVE GRAYDON, individually and as representative of the taxpayers of the City of Pasadena,

Petitioner,

v.

THE PASADENA REDEVELOPMENT AGENCY, a public body corporate and politic; LOUIS SHEPARD, Executive Director of the Pasadena Redevelopment Agency;

Respondents,

ERNEST W. HAHN, INCORPORATED, a California Corporation,

Real Party in Interest.

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The entire BRIEF FOR RESPONDENT IN OPPOSITION comes under U. S. Supreme Court Rule 22.5:

Eugene B. Jacobs should not represent the Respondent Pasadena Redevelopment Agency. Petitioner believes he has a conflict of interest, having helped to create the redevelopment laws, while a California deputy attorney general. Also, he has an accountability problem as first signatory to the Opinion provided the Pasadena Redevelopment Agency (PRA) to contravene the competitive bidding law. (See LIST OF CORRECTIONS, 4, Petition, page 19, (P, p 19)). See serious breach in use of Kennedy v. Ross (P, p 21).

Questions Presented with Argument:

1. & A.: The 14th Amendment states: "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

..." This proscription is intrinsic in every law in every state. Citizens' right to petition under the First Amendment includes the right to "Petition for Writ of Mandamus and Declaratory Judgment and Injunction in Support Thereof" to enforce a state competitive bidding construction contract law to protect public funds. When one state law under California Code of Civil Procedure prevents enforcement of the competitive bidding law, thereby allowing an illegal construction contract, which is therefore null and void, to stand this abridges citizens' privilege to petition. Only the United States Supreme Court can determine which state law contravenes the 14th Amendment.

Further, in her pro per learning experience in Superior Court, Graydon v. Board of Directors, et al., NEC 17236, petitioner relied upon the 14th Amend-

ment. (See P,p 26).

2. & B.: Petitioner's petition for Writ of Certiorari was timely filed under Rule 20. 2. & 3. and Rule 33.7. It was docketed as of August 25, 1980, No. 80-438.

3. & C.: 1. Petition has reference to the official opinion of the California Court of Appeal, Second District. (See P,p. 24 & 67).

2. Nothing can be more concise than the 14th Amendment. The grounds are intrinsic in the State laws and when one law contravenes another only the Supreme Court can determine which law stands.

3. The entire petition sets forth as verbatim as the rules permit in space the intrinsic State statutory requirement to correct conflicting laws preventing citizens' right to protect public funds.

4. List of five corrections (P, 12-

No. 80-438

IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

October Term, 1980

GENEVIEVE GRAYDON,

Petitioner,

vs.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

On Petition for Writ of Certiorari to
The Court of Appeal of the State of California
Second Appellate District.

BRIEF FOR RESPONDENT IN OPPOSITION.

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No. 80-438

IN THE

Supreme Court of the United States

October Term, 1980

GENEVIEVE GRAYDON,

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vs.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

On Petition for Writ of Certiorari to
The Court of Appeal of the State of California
Second Appellate District.

BRIEF FOR RESPONDENT IN OPPOSITION.

Questions Presented.

1. Has Petitioner seasonably raised any questions of federal law so as to confer upon this Court jurisdiction under 28 U.S.C. §1257 (3)?
2. Was Petitioner's Petition for Writ of Certiorari timely filed with this Court?
3. Has Petitioner complied with the rules of this Court pertaining to the content and filing of petitions for Writ of Certiorari?

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Opinion Below.

The opinion of the Court of Appeal of the State of California, Second Appellate District, is reported as *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal. App. 3d 631, 164 Cal. Rptr. 56. Petitioner's petition for a hearing before the California Supreme Court was denied by order dated June 14, 1980. A copy of the aforementioned opinion and a typewritten facsimile of the notice of the aforementioned order are printed as appendices to Petitioner's Petition for Writ of Certiorari.

Jurisdiction.

There is a defect of jurisdiction over the subject matter of the questions sought to be raised by Petitioner. Petitioner has failed to state the grounds on which the jurisdiction of this Court is invoked. However, the provisions of 28 U.S.C. §1257 (3) govern jurisdictional questions on petition for Writ of Certiorari. Petitioner apparently claims that the Statute of Limitations contained in California Code of Civil Procedure Section 860 et seq. is unconstitutional in that it violates "a citizen's right to petition under the First Amendment and the rights to due process and equal protection under the Fifth and Fourteenth Amendments . . . " Petitioner has failed to show, however, that this question or any other federal question was raised before the courts of the State of California. The question of the repugnancy of California Code of Civil Procedure Section 860 et seq. to the federal Constitution or any other provision of federal law was never raised by Petitioner at any stage of the proceedings before the California courts. Consequently, no California court has adjudicated the Constitutional questions which are raised in this Court for the first time. It is therefore submitted that jurisdiction is lacking. Secondly, the California court's decision rests entirely on state law grounds.

On each of these two grounds it is submitted that jurisdiction is lacking *(Chicago I. & L.R. Railway Co. v. McGuire* (1905) 196 US 128, 130-133, 49 L. Ed. 413, 25 S. Ct. 200; *Godchaux Co. v. Estopinal* (1919) 251 US 179, 180-181, 64 L. Ed. 213, 40 S. Ct. 116; *Wall v. Chesapeake & Ohio Railway Company* (1921) 256 US 125, 126, 65 L. Ed. 856, 41 S. Ct. 402; *Rooker v. Fidelity Trust Co.* (1923) 261 US 114, 116-117, 67 L. Ed. 556, 43 S. Ct. 288; *Herndon v. Georgia* (1935) 295 US 441, 443, 79 L. Ed. 1530, 55 S. Ct. 794; *Herb v. Pitcairn* (1945) 324 US 117, 125, 89 L. Ed. 789, 65 S. Ct. 459; *Ellis v. Dixon* (1955) 349 US 458, 460, 99 L. Ed. 1231, 75 S. Ct. 850; *Cardinale v. Louisiana* (1969) 394 US 437, 438-9, 22 L. Ed. 2d 398, 89 S. Ct. 1162; *Tacon v. Arizona* (1973) 410 US 351, 352, 35 L. Ed. 2d 346, 93 S. Ct. 998; Moore, *Federal Practice* (2d.ed.), vol. 12, §§510.01, 511.01, 512.01.)

As stated in *Chicago I. and L.R. Railway Co. v. McGuire* (1905) 196 US 128, 133, 49 L. Ed. 413, 417, 25 S. Ct. 200:

> "This case is the not infrequent one of an attempt to clutch at the jurisdiction of this court as an afterthought, when all resources of litigation have been exhausted."

Petitioner's case is a classic example of the above quotation.

Other questions raised by Petitioner essentially re-state and re-argue issues of state law decided by the Courts below solely on the basis of the interpretation of California law. Such questions fail to confer jurisdiction on this Court inasmuch as they contain no questions of federal law.

Statement of the Case.

In February, 1975, Respondent and H-CHH Associates ("Developer"), a limited partnership, composed of Real Party in Interest and Carter Hawley Hale Stores, Inc., approved and executed a Disposition and Development Agreement ("DDA") for the construction in the Pasadena Down-

town Redevelopment Project of an enclosed retail shopping mall and appurtenant public parking facilities (Clerks Transcript, "C.T.", p. 726). Under the DDA, Respondent acquired the designated site, relocated the occupants, performed demolition and clearance and then conveyed a portion of the site consisting of an air rights parcel, to Developer for construction of the shopping mall. On the portion of the site retained by Respondent, Respondent has constructed three public parking garages. Two of these structures are located adjacent to the mall, across the public right-of-way and are connected to the mall by pedestrian bridges. Contracts for construction of these two structures were competitively bid. The third structure is a subterranean garage located directly beneath the shopping mall (C.T. pp. 726-727). The publicly owned subterranean garage and the privately owned shopping mall are a single structure, with completely integrated footings, foundations and support, interconnecting stairways, escalators and elevators, etc. (C.T. pp. 28-31, 32-4 and 41-43).

Recognizing the integrated nature of the shopping mall and the subterranean garage and the time delays and increased costs which would accrue if the two were constructed simultaneously by two different contractors, the DDA stated that it was the desire of Respondent, subject to legal requirements, to negotiate with Developer's general contractor, Ernest W. Hahn, Inc. (Real Party in Interest) for the construction of the subterranean garage, based on a stated guaranteed maximum price (C.T. p. 729). On November 2, 1977, at a meeting at which Petitioner was present, Respondent awarded the contract for construction of the subterranean garage to Real Party in Interest without having competitively bid the contract. This act was taken in reliance upon a full written legal opinion of Respondent's general counsel that the contract for construction of the

subterranean garage was not subject to the competitive bidding requirements of California Health & Safety Code Section 33422, since California law clearly establishes that notwithstanding statutory provisions to the contrary, competitive bidding is not required where competitive proposals would be unavailing, not produce an advantage, and would be undesirable, impractical or impossible (C.T. pp. 730-731).

This action was brought on January 26, 1978, by the filing of a Petition for Writ of Mandamus in Superior Court of Los Angeles County (C.T. p. 1). The allegations of that petition are set forth in Petitioner's Petition for Writ of Certiorari, at pages two through six. The Petition for Writ of Mandamus essentially states that Petitioner is a resident and taxpayer of the City of Pasadena, California, sets forth the fact of the award of the contract for construction of the subterranean garage without competitive bidding, cites the provisions of Health & Safety Code Section 33422 and alleges: (1) that award of the Parking Garage Contract to Hahn without competitive bidding is illegal, (2) that such contract is "null and void", and (3) that payment from Respondent to Real Party in Interest of public funds pursuant to the provisions of such contract is unauthorized and a misuse of public funds. Petitioner then prays for relief (1) directing Respondent to advertise for competitive bids, (2) declaring the subject contract illegal, and (3) prohibiting Respondent from disbursing any funds under such contract. Petitioner nowhere alleged violation of any federal constitutional or statutory rights. The Petition for Writ of Mandamus is founded entirely upon California law.

In answer to the Petition for Writ of Mandamus, Respondent set up the bar of the Statute of Limitations contained in California Code of Civil Procedure Sections 860-870, made applicable by the provisions of California Government

Code Section 53511 (C.T. p. 82). These sections establish a procedure for validating contracts and other actions of public agencies and contain a 60 day Statute of Limitations, running from the date of authorization of the contract, for actions brought contesting the validity of bonds, warrants, contracts, obligations or evidences of indebtedness to which such statutory provisions are applicable.

The Superior Court of Los Angeles County held the action barred by the Statute of Limitations contained in California Code of Civil Procedure Sections 860-870 (C.T. p. 737). No federal questions were raised or adjudicated in Superior Court.

The judgment of the Superior Court was sustained by the Court of Appeal of the State of California, Second Appellate District in *Graydon v. Pasadena Redevelopment Agency* 104 Cal. App. 3d 631, 164 Cal. Rptr. 56, wherein the Court of Appeal expressly recognized that in addition to Petitioner's action being barred by the State of Limitations, this was a case in which competitive bidding was not required. No federal questions were raised or adjudicated before the Court of Appeal. The decision of that court rested solely on state law.

Petitioner's Petition for a hearing before the California Supreme Court, which again was based solely on matters of California law and presented no federal questions whatever, was denied by order dated June 4, 1980. A typewritten facsimile of the notice of that order is included in the appendix to the Petition for Writ of Certiorari.

On or about August 18, 1980, Petitioner submitted to this Court a Petition for Writ of Certiorari which was returned to Petitioner by this Court shortly thereafter for failure to comply with the rules governing submission of such petitions. Thereafter, on September 19, 1980, Petitioner sub-

mitted to this Court a second, virtually identical Petition for Writ of Certiorari, again dated August 18, 1980, but containing certain additional appendices. This second petition was served on Respondents September 18, 1980. The notice of the date of filing and docket number required by Rule 19.3 of the rules of this Court was not received by Respondent until October 2, 1980.

The subterranean garage, the two adjacent garages and the retail shopping center are now constructed, fully operational and have been in use since August, 1980. This entire matter is therefore moot.

ARGUMENT.

A. This Court Lacks Jurisdiction of the Subject Matter of the Questions Sought to Be Presented by Petitioner.

Petitioner has attempted in her Petition for Writ of Certiorari before this Court to raise for the first time questions of federal law. An examination of Petitioner's Petition for Writ of Mandamus, the Findings of Fact and Conclusions of Law of the Superior Court of Los Angeles County and the opinion of the California Court of Appeal (all of which are reproduced in the Petition for Writ of Certiorari) and the entire record in this case disclose no previous mention whatever of any federal statutory or constitutional questions. In her Petition for Hearing before the California Supreme Court, again, no questions of federal law were raised.

The decisions of the courts below are based exclusively on matters of California law. This case was decided, both in Superior Court and the Court of Appeal, on questions relating to the applicability and operation of the Statute of Limitations contained in California Code of Civil Procedure Section 863. By denying Petitioner's Petition for Hearing, the California Supreme Court confirmed that the principles on which this case was decided below are well-settled in California law. No California court has ruled on the alleged federal constitutional questions presented in Petitioner's Petition for Writ of Certiorari.

Few principles are more firmly established than that the United States Supreme Court will not pass on a constitutional question presented to it on appeal from a state court judgment where the state court has not had an opportunity to rule on the question (*Cardinale v. Louisiana* (1969) 394 US 437, 438-9, 22 L. Ed. 2d 398, 89 S. Ct. 1162). A litigant must both raise the constitutional question in the

trial court and preserve the question on appeal through the state courts (*Bailey v. Anderson* (1945) 326 US 203, 90 L. Ed. 3, 66 S. Ct. 66). Where the federal question is not raised below, or called to the attention of, or decided by the state court, the United States Supreme Court is without jurisdiction to review the judgment (*New York ex rel. Rosevale Realty Co. v. Kleinert* (1925) 268 US 646, 69 L. Ed. 1135, 45 S. Ct. 618; *Missouri P.R. Co. v. Hanna* (1924) 266 US 184, 69 L. Ed. 235, 45 S. Ct. 36; *Cardinale v. Louisiana* (1969) 394 US 437, 438-9, 22 L. Ed. 2d 398, 89 S. Ct. 1162; *Tacon v. Arizona* (1973) 410 US 351, 352, 35 L. Ed. 2d 346, 93 S. Ct. 998; Moore, *Federal Practice*, (2d ed.), vol. 12 §510.01). This rule has been held to preclude the exercise of jurisdiction by this Court even where the federal question was raised before the state court of highest jurisdiction on a petition for re-hearing before such court (*Rooker v. Fidelity Trust Co.* (1923) 261 US 114, 116-117, 67 L.Ed. 556, 43 S. Ct. 288).

In *Cardinale v. Louisiana* (1969) 394 US 437, 438, 22 L. Ed. 2d 398, 400, 89 S. Ct. 1162, this Court stated:

> "Although certiorari was granted to consider this question, the fact emerged in oral argument that the sole federal question argued here had never been raised, preserved, or passed upon in the state courts below. It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions. In Crowell v. Randell, 10 Pet 368, 9 L 9 L Ed 458 (1836), Justice Story reviewed the earlier cases commencing with Owings v. Norwood's Lessee, 5 Cranch 344, 3 L Ed 120 (1809), and came to the conclusion that the Judiciary Act of 1789, c 20 §25, 1 Stat 85, vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below. "If both of these do not appear on the record, the appellate jurisdiction fails." 10 Pet 368, 391, 9 L Ed 458, 467.

The Court has consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions both before the Crowell opinion, Miller v Nicholls, 4 Wheat 311, 315, 4 L Ed 578, 579 (1819), and since, e.g. Safeway Stores, Inc. v Oklahoma Retail Grocers Assn., Inc., 360 US 334, 342, n. 7, 3 L Ed 2d 1289, 1286, 79 S Ct 1196 (1959); State Farm Mutual Automobiles Ins. Co. v. Duel, 324 US 154, 160-163, 89 L Ed 812, 817-819, 65 S Ct 573 (1945); McGoldrick v Compagnie Generale Transatlantique, 309 US 430, 434-435, 84 L Ed 849, 851-852, 60 S Ct 670 (1940); Whitney v California, 274 US 357, 362-363, 71 L Ed 1095, 1100-1101, 47 S Ct 641 (1927); Dewey v Des Moines, 173 US 193, 197-201, 43 L Ed 665, 6670-668, 19 S Ct 379 (1899); Murdock v City of Memphis, 20 Wall 590, 22 L Ed 429 (1875).

In addition to the question of jurisdiction arising under the statute controlling our power to review final judgments of state courts, 28 USC §1257, there are sound reasons for this. Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds. O'Connor v. Ohio, 385 US 92, 17 L Ed 2d 189, 87 S Ct 252 (1966), they should be given the first opportunity to consider them."

Furthermore, even if a federal question had been raised in a state court, if the state court decision rests on adequate state grounds, the Supreme Court has no jurisdiction

(Moore, *Federal Practice* (2d ed.), vol. 12, §511.01; *Ellis v. Dixon* (1955) 349 US 458, 460, 99 L. Ed. 1231, 75 S. Ct. 850). Justice Jackson, in *Herb v. Pitcairn* (1945) 324 US 117, 125, 89 L. Ed. 789, 65 S. Ct. 459, stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [Citations omitted.] The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction."

A review of the opinion of the District Court Appeal shows it rests entirely on adequate and independent state grounds.

Even if Petitioner had raised a federal question in the state courts, which she did not, and even if the state court had ruled on such question and based its ruling on it and not on independent state grounds, which it did not, the Supreme Court does not have jurisdiction if the federal question is not substantial (*Zucht v. King* (1922) 260 US 174, 67 L. Ed. 194, 43 S. Ct. 24; Moore, *Federal Practice* (2d ed.), vol. 12, §512.01). It is submitted that the federal question raised by Petitioner for the first time in this Court is not substantial.

Petitioner having failed to raise and preserve any federal question and the state court decision resting on adequate and independent state grounds, this Court lacks jurisdiction over the subject matter of the federal constitutional questions now sought to be raised. Other contentions presented by Petitioner as a "LIST OF CORRECTIONS IN SUPPORT OF PETITIONER", do not even purport to contain questions of federal law. Such contentions relate primarily to Petitioner's allegations in her Petition for Writ of Mandamus that the award of the contract for construction of the sub-

terranean garage contravenes state competitive bidding requirements. These issues were not adjudicated in the California courts, as they were held barred by the operation of the Statute of Limitations. Even if such questions had been adjudicated, jurisdiction would not thereby be conferred on this Court, since such questions relate solely to matters of state law and contain no federal questions.

Respondent therefore submits that this Court should deny Petitioner's Petition for Writ of Certiorari for lack of jurisdiction over the subject matter.

B. Petitioner's Petition for Writ of Certiorari Was Not Timely Filed Before This Court.

The Rules of the Supreme Court of the United States ("Rules"), Rule 20.2, require that a petition for Writ of Certiorari be filed within 90 days after entry of judgment. The time for filing a petition for Writ of Certiorari runs from the date the judgment or decree sought to be reviewed is rendered (Rule 20.4). The California Supreme Court denied Petitioner's Petition for Hearing on June 4, 1980, rendering final the judgment of the Court of Appeal (California Rules of Court, Rule 24(a)). On or about August 25, 1980, Petitioner filed with this Court a petition for Writ Certiorari, dated August 18, 1980. On or about August 18, 1980, Respondent received in the mail three copies of such petition. Shortly thereafter attorneys for Respondent learned by telephone conversation with the Clerk of this Court, that Petitioner's Petition had been returned to her for failure to comply with the Rules. This was accomplished by letter dated August 27, 1980. On September 18, 1980, attorneys for Respondent again received in the mail three copies of a second Petition for Writ of Certiorari. This petition contained the earlier petition, dated August 18, 1980 and in addition, a list of "Questions Presented" and certain orders and opinions of the California Courts attached as an appendix. This second Petition for Writ of Certiorari was filed with this Court on September 19, 1980. Not until October

2, 1980, did attorneys for Respondent received the notice of filing and docket number required by Rule 19.3. That notice listed the date of filing of the Petition for Writ of Certiorari as August 25, 1980. It is apparent that August 25, 1980 could not be the date of filing of the second petition, since the first petition was not returned to Petitioner until August 27, 1980.

Respondent's second Petition for Writ of Certiorari having been filed on September 19, 1980, and therefore more than 90 days from the date of judgment, Respondent submits that this Court should deny Petitioner's Petition for Writ of Certiorari as not having been timely filed.

C. Petitioner's Petition for Writ of Certiorari Is Defective Under the Rules.

This Court should deny Petitioner's Petition for Writ of Certiorari for failure to comply with Rule 21. The following is a listing of the defects of said petition:

1. The petition lacks a reference to the official report of the opinion of the California Court of Appeal, Second District, as required by Rule 21.1(d).
2. The petition lacks a concise statement of the grounds on which the jurisdiction of this Court is invoked (Rule 21.1(e)), inasmuch as Petitioner fails to cite the statutory provision believed to confer on this Court jurisdiction to review the judgment in question by Writ of Certiorari (Rule 21.1(e)(iv)).
3. The petition fails to comply with the provisions of Rule 21.1(f) requiring the setting out verbatim of the constitutional provisions, etc., which the case involves.
4. The petition lacks a concise statement of facts (Rule 21.1(g)).

5. The petition fails to specify the stage in the proceedings at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way they were passed upon by the Court, with appropriate citations to the record, so as to show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on Writ of Certiorari (Rule 21.1(h)). The petition cannot be amended to comply with this rule, since, as set forth above, no federal questions were raised before the California courts.
6. The petition lacks the statement amplifying the reasons relied on for allowance of the writ required by Rule 21.1(j).
7. The petition fails to present with accuracy, brevity, and clearness the matters essential to a ready and adequate understanding of the points requiring consideration (Rule 21.5).

Conclusion.

Petitioner failed to properly raise and preserve in the California courts the federal constitutional questions which are advanced in the petition, creating a fatal jurisdictional defect. The opinion of the California Court of Appeal rests entirely on adequate and independent state grounds, likewise creating a fatal jurisdictional flaw. Other matters advanced by Petitioner contain no federal questions. This Court therefore lacks jurisdiction over the subject matter of this case.

Additionally, the Petition for Writ of Certiorari was not timely filed and contains numerous serious defects of both form and substance.

Finally, Petitioner has included in her Petition for Writ of Certiorari many comments and contentions which are

both self-serving and outside the record. Because of the jurisdictional defects in the petition, Respondent has chosen not to respond to each of such comments and contentions. By so doing, Respondent does not agree with or acquiesce in any of Petitioners contentions. Respondent beleives that a full and fair account of this case is contained in the opinion of the California Court of Appeal.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EUGENE B. JACOBS
of Eugene B. Jacobs,
a Professional Corporation
Attorney for Respondent Pasadena Redevelopment Agency.

Of Counsel
WEISER, KANE, BALLMER & BERKMAN,
HAHN & HAHN.
STEARNS, KIM & WILLENS

Supreme Court, U.S.
FILED
OCT 30 1980
MICHAEL RODAK, JR., CLERK

No. 80-438

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GENEVIEVE GRAYDON,

Petitioner,

v.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

REPLY BRIEF

GENEVIEVE GRAYDON, in Propria Persona
99 South Raymond Avenue
Pasadena, California 91105
(213) 793-5429 Petitioner

LIST OF PARTIES

GENEVIEVE GRAYDON, individually and as representative of the taxpayers of the City of Pasadena,

Petitioner,

v.

THE PASADENA REDEVELOPMENT AGENCY, a public body corporate and politic; LOUIS SHEPARD, Executive Director of the Pasadena Redevelopment Agency;

Respondents,

ERNEST W. HAHN, INCORPORATED, a California Corporation,

Real Party in Interest.

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The entire BRIEF FOR RESPONDENT IN OPPOSITION comes under U. S. Supreme Court Rule 22.5:

Eugene B. Jacobs should not represent the Respondent Pasadena Redevelopment Agency. Petitioner believes he has a conflict of interest, having helped to create the redevelopment laws, while a California deputy attorney general. Also, he has an accountability problem as first signatory to the Opinion provided the Pasadena Redevelopment Agency (PRA) to contravene the competitive bidding law. (See LIST OF CORRECTIONS, 4, Petition, page 19, (P, p 19)). See serious breach in use of Kennedy v. Ross (P, p 21).

Questions Presented with Argument: 1. & A.: The 14th Amendment states: "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

..." This proscription is intrinsic in every law in every state. Citizens' right to petition under the First Amendment includes the right to "Petition for Writ of Mandamus and Declaratory Judgment and Injunction in Support Thereof" to enforce a state competitive bidding construction contract law to protect public funds. When one state law under California Code of Civil Procedure prevents enforcement of the competitive bidding law, thereby allowing an illegal construction contract, which is therefore null and void, to stand this abridges citizens' privilege to petition. Only the United States Supreme Court can determine which state law contravenes the 14th Amendment.

Further, in her pro per learning experience in Superior Court, Graydon v. Board of Directors, et al., NEC 17236, petitioner relied upon the 14th Amend-

ment. (See P,p 26).

2. & B.: Petitioner's petition for Writ of Certiorari was timely filed under Rule 20. 2. & 3. and Rule 33.7. It was docketed as of August 25, 1980, No. 80-438.

3. & C.: 1. Petition has reference to the official opinion of the California Court of Appeal, Second District. (See P,p. 24 & 67).

2. Nothing can be more concise than the 14th Amendment. The grounds are intrinsic in the State laws and when one law contravenes another only the Supreme Court can determine which law stands.

3. The entire petition sets forth as verbatim as the rules permit in space the intrinsic State statutory requirement to correct conflicting laws preventing citizens' right to protect public funds.

4. List of five corrections (P, 12-

26) is a list of facts. Petitioner's own statements are factual.

5. The Supreme Court has jurisdiction to enter the case to protect petitioner's right of petition, right of due process and equal protection of the laws, when the State through its courts denies the Supreme Court's right to determine conflict in its laws.

6. Under the space restrictions petitioner cannot amplify her reasons beyond the simple right of mandamus petition and exposure of errors against her.

7. Petitioner is not an attorney. She has done the best she could in presenting the reasons why the Supreme Court should enter the case.

Monell v. New York City Dept. of Social Services, 436 US 658, 56 L Ed 2d 611, 98 S Ct 2018 (No. 75-1914), decided June 6, 1978, made the following decision:

"On certiorari, the United States Supreme Court reversed. In an opinion by Brennan, J., joined by Stewart, White, Marshall, Blackmun, and Powell, JJ., and joined in part (as to holdings 1 and 5 below) by Stevens, J., it was held (1) overruling Monroe v Pape as having been based on an erroneous interpretation of the legislative history pertaining to 42 USCS Section 1983, that local governments, municipal corporations, and school boards were 'persons' subject to liability under Section 1983, and thus were not wholly immune from Section 1983 suits; (2) that as 'persons' subject to liability under Section 1983, local governing bodies could be sued directly for monetary, declaratory, or injunctive relief where the action that was alleged to be unconstitutional implemented a policy statement, ordinance, regulation, or decision officially adopted by that body's officers, or where constitutional deprivations were visited pursuant to governmental 'custom,' even though such custom had not received formal approval through the body's decisionmaking channels; (3) that local government officials sued in their official capacities were 'persons' under Section 1983 in those cases in which a local government would be suable in its own name; ..."

This case reported in substance above can be applied to petitioner's rights.

Since the bonds totalling over $60,000,000 which paid for the PRA's parking are in default, it is understandable why it has not addressed the facts. If it did, it would have to explain itself out of Regus v. City of Baldwin Park, 70 C.A. 3d 968, 139 Cal.Rptr. 196 (1977).

The 60 day statute of limitations exists so that legal actions which can stop a project will be brought quickly. See Plunkett v. City of Lakewood, 44 C.A. 3d, 344, 116 Cal. Rptr. 885 (1975). The State Court here has done nothing more than sweep the federal questions of equal protection and due process under the rug. Petitioner did not attempt to stop the project -- just force competitive bidding required by law.

It is settled that a State Court may not avoid deciding federal questions and thus defeat the jurisdiction of the

Supreme Court by putting forward non-federal grounds of decision which are without any fair or substantial support. National Asso. for Advancement of Colored People v. Alabama (357 US 449, 455, 2 L ed 2d 1488, 1495, 78 S Ct 1163 (1958); Staub v. Baxley, 355 US 313, 318-320, 2 L ed 2d 302, 308-310, 78 S Ct 277 (1958); Ward v. Love Country, 253 US 17, 22, 64 L ed 751, 758, 40 S Ct 419. Thus, the independent state grounds relied upon for decision by the Court of Appeal of California are untenable and inadequate. The question of whether the Federal Constitution compels that the findings and judgment in the State Court must be reversed is properly before this Court. Obviously, the State Court did not choose to discuss the Constitutional questions.

The inapplicability of the PRA's arguments are also demonstrated in Curtis

Publishing Co. v. Butts, 388 U.S. 130, 142-143, 18 L.ed.2d. 1094, 875 S.Ct. 1975 (1967) where this Court states:

> "As our disposition of Rosenblatt v. Baer, 383 US 75, 15 L ed 2d 597, 86 S Ct 669 and other cases involving constitutional questions indicate, the mere failure to interpose such a defense prior to the announcement of a decision which might support it cannot prevent a litigant from later invoking such a ground. Of course it is equally clear that even constitutional objections may be waived by a failure to raise them at a proper time, Michel V. Louisiana, supra, 350 US at 99, 100 L ed at 92, but an effective waiver must, as was said in Johnson v. Zerbst, 304 US 458, 82 L.ed 1461, 1466, 58 S Ct 1019, 146 ALR 357, be one of a 'known right or privilege.'"

This Court has validated the right of public entities to take private property for private developers. It must now take the next step.

Due process and equal protection require that the public bodies and private developers be held accountable for the damages arising from their failure to

follow the law.

It is respectfully submitted that the Petition for Writ of Certiorari should be accepted.

Respectfully submitted,

Genevieve Graydon, in Propria Persona,

99 South Raymond Avenue

Pasadena, California 91105

Signed: Genevieve Graydon

Dated: October 22, 1980

Supreme Court, U. S.
FILED
NOV 29 1980
MICHAEL RODAK, JR., CLERK

No. 80-438

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GENEVIEVE GRAYDON,

Petitioner,

v.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

PETITION FOR REHEARING

GENEVIEVE GRAYDON, in Propria Persona
99 South Raymond Avenue
Pasadena, California 91105
(213) 793-5429 Petitioner

LIST OF PARTIES

GENEVIEVE GRAYDON, individually and as representative of the taxpayers of the City of Pasadena,

Petitioner,

v.

THE PASADENA REDEVELOPMENT AGENCY, a public body corporate and politic; LOUIS SHEPARD, Executive Director of the Pasadena Redevelopment Agency;

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Under Supreme Court Rule 51.2. a petition for rehearing of an order denying a petition for writ of certiorari must be "limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented." This petition for rehearing is based on substantial grounds not previously presented:

Petitioner believed original petition was restricted to the narrow limits of the effect of the legal actions on her and the taxpayers of Pasadena. She now truly believes the effect is state-wide, even out of state.

The petitioner is troubled by the implications of the denial of the writ of certiorari, her last resort, but would not request a rehearing just to cause a delay. (see Petition, page 26, regarding petioner's applicable ethics.)

THE OPINION BELOW BARS ALL CALIFORNIA CITIZENS FROM ACCESS TO THE COURTS IN CASES CHALLENGING THE LEGALITY OF LOCAL GOVERNMENT ACTION.

This case involves the Statute of Limitations, applicable only to citizens suing their government, which, as construed, slams the courthouse doors closed whenever the citizen, exercising his First Amendment right of petition, asks the court's help in preventing lawless conduct by local government officials.

This deprivation of the right to petition, by closing citizen access to the courts, adversely affects all California citizens, and potentially harms other United States citizens residing in states which have similarly worded statutes.

Under the ruling below, a citizen is prevented from challenging any contract awarded by a local government, however

illegal the procedure or however outrageous its terms, unless the suit is filed within an unreasonably short 60-day period. Furthermore, this 60-day period commences, not on the date the contract is signed, but on the earlier date when the local agency decides to enter into the illegal contract. The governing board of the local agency is not required to know the terms and conditions of the contract when it makes that decision.

The governing board can decide to enter a contract even though the terms and the conditions of the contract have not been agreed upon, and even though no written contract has yet been prepared.

The short, 60-day time period runs against the citizen even though (1) at the time the local government makes its decision, no written contract exists, (2) the

terms of the contract are not negotiated or agreed upon at any time during the Limitations period, (3) the contract is not signed as of the end of the Limitations period, (4) if the citizen filed within the 60-day Limitations period, the case would be dismissed as premature, a "Catch 22!"

Thus, all California citizens, and an unknown number of citizens in other states, are denied any effective way to restrain local government officials from violating the law in the award of government contracts.

THE DECISION BELOW VIOLATES THE FIRST AND THE FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The decision below violates the United States Constitution in the following respects:

1, it effectively deprives California citizens of their right of access to the courts to challenge illegal contracts authorized by local government, in violation of the right to petition their government for redress of grievances, guaranteed by the First Amendment; and

2, it unreasonably discriminates against citizens seeking to force their government to obey the law when awarding contracts, by imposing a unique and unreasonably short 60-day Statute of Limitations on such persons, which can start to run even before the contract is negotiated. No other class of persons or type of action is subjected to so short a period, nor is any local government so restrained in its action against any of its citizens.

THE DECISION BELOW DEPRIVES CITIZENS OF THEIR FIRST AMENDMENT RIGHT TO PETITION AND THEREBY SANCTIONS LAWLESS GOVERNMENT CONDUCT.

The First Amendment guarantees to citizens the right to petition their government for redress of grievances. This right includes the right to petition the courts for assistance, when that is necessary, to force local government officials to obey the law, or to restrain unlawful expenditures from the public treasury.

The decision below essentially deprives California citizens of the exercise of this valuable constitutional right.

The decision below converts a Statute of Limitations, previously applied only in very limited circumstances, into an effective bar against all citizens' actions involving municipal contracts.

While neither the language of the Statute nor the language of the courts' interpretation of it expressly prohibits citizens' action on municipal contracts, the effect of the decision below is to prohibit such action.

This effect arises because the "Limitations period" can start to run (and in the case of petitioner did start to run) before a written contract even exists.

Furthermore, the 60-day period is too short to allow citizens the time reasonably required to take the necessary responsible action when confronted by governmental illegality, including the following:

1. Persuade the governing body that the contract is illegal.

2. Organize citizens to effectively counter the illegal government action.

3. Raise the substantial funds necessary for litigation. (Petitioner used her own savings for legal fees, as a legacy to Pasadena, of which she has been a long-time citizen, to protect its fiscal integrity. Had savings for that purpose not become exhausted, she would not have had to go to the United States Supreme Court "pro per." However, she values this privilege and appreciates the patience of its Clerk in helping her to comply with its Rules. The respondents have unlimited public funds for legal expenses. No citizen's attorney is paid from public funds!)

4. Engage legal counsel, and

5. File an action.

The right to petition, which is under attack by the decision below, is a fundamental right, which goes to the very heart of the federal system. It is the cornerstone of home rule, the foundation which

gives meaning to the precepts that we are a Government of the People and by the People.

Citizens, who are the chief enforcers of the various "good government" statutes (i.e.: open meeting laws, competitive bidding statutes, conflict of interest prohibitions, and laws prohibiting gifts of public funds) are rendered impotent by the decision below.

Thus, the court below has opened the season to local government officials to line their pockets and reward their friends, free of judicial interference.

Precluded from judicial review by the decision below, and therefore implicitly licensed by it, are the following:

1. contracts authorized in secret meetings held in violation of the open-meetings laws;

2. contracts awarded without competi-

tive bidding statutes;

3. contracts which appear to enrich a member of the board authorizing the contract, in violation of the conflict of interest laws;

4. contracts selling governmental property at a fraction of its value, in violation of the statutes prohibiting gifts of public funds.

An effect of the decision below which is perhaps worse than the sanctioning of illegal raids on the public treasury is the effect on the attitudes of citizens of the local government. Deprived of any effective method of preventing official lawlessness, citizens tend to become cynical, apathetic, distrustful of their government, frustrated and discontented.

Americans are a hardy, self-reliant and fair people. Given an impartial arbiter for their disputes, they will happily

use private funds to assure that their local government acts lawfully and respects the rights of citizens.

THE DECISION BELOW IS UNCONSTITUTIONALLY DISCRIMINATORY.

The decision below applies an unusual and unreasonably short Limitation period to a single class of people seeking to enforce public rights.

Only citizens suing in their capacity as citizens, on behalf of all of the people, are subjected to so short a Limitations period.

Only government officials who have arguably acted illegally, contrary to the public interest, are benefited by it.

No other class of people, or type of action, is subject to so short a Statute of Limitations as are citizens in their action against illegal government con-

tracts. Nor is the local government subjected to so short a period when it sues a citizen on a contract with the government.

For example, if a city wishes to sue a citizen-contractor, alleging that the contract between them is invalid, the city has four years to do so.

However, if a citizen wishes to sue the city, alleging that a contract is prohibited by law, he has only 60 days to do so!

There is no reasonable basis advanced to support such arbitrary discrimination in so fundamental a matter. The decision below unconstitutionally discriminates against the citizen of local government.

CONCLUSION.

The decision below strikes at the heart of popular democratic government

at the local level. If allowed to stand, the lower court's ruling strikes a critical, perhaps mortal, blow to the concept of citizens' involvement in their government.

People restricted by this decision are citizens acting under the highest principles -- seeking honest, law abiding government. They are not seeking private gain or personal enrichment. Instead, the reward they seek is shared by the public, all of whom benefit when courts demand that government must obey the law.

The only persons who stand to gain from the decision below are the unscrupulous public officials and their cronies who join them in their raid on the public treasury.

The decision below runs afoul of the United States Constitution on two grounds:

1. it unreasonably curbs the right of

a citizen to petition his government for redress of grievances, a right guaranteed by the First Amendment;

2. it unreasonably discriminates against the citizens who seek the help of the courts to force their government to obey the law.

The ruling below carries with it numerous, disastrous side effects. Among others, the decision sanctions government lawlessness, advances the opportunity for official corruption, promotes citizen cynicism, and furthers popular distrust of government.

When good people are prevented from acting, and by petitioner's case, evil will triumph.

The petitioner respectfully requests that this Court grant her Petition for a Writ of Certiorari.

Respectfully submitted,

Genevieve Graydon,

in Propria Persona,

99 South Raymond Avenue,

Pasadena, California 91105

Signed: Genevieve Graydon

Dated: November 24, 1980